

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 96

THE PEOPLE OF PUERTO RICO, PETITIONER,

vs.

RUBERT HERMANOS, INC., ET AL.

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT**

PETITION FOR CERTIORARI FILED MAY 20, 1941.

CERTIORARI GRANTED OCTOBER 13, 1941.

**UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT.**

OCTOBER TERM, 1939.

No. 3631.

ROBERT HERMANOS, Inc.,

DEFENDANT, APPELLANT,

v.

THE PEOPLE OF PUERTO RICO,

PLAINTIFF, APPELLEE.

**APPEAL FROM THE SUPREME COURT OF PUERTO RICO,
FROM JUDGMENT, JULY 26, 1940.**

TRANSCRIPT OF RECORD.

**J. HENRI BROWN,
JAIME SIFRE, JR.,**

for Appellant.

WILLIAM CATTRON RIGBY,

for Appellee.

**BOSTON:
PRINTED UNDER DIRECTION OF THE CLERK.**

1940

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1939.

No. 3631.

RUBERT HERMANOS, INC.,
DEFENDANT, APPELLANT,

v.

THE PEOPLE OF PUERTO RICO,
PLAINTIFF, APPELLEE.

TRANSCRIPT OF RECORD.

[Filed in Circuit Court of Appeals September 28, 1940.]

IN THE SUPREME COURT OF PUERTO RICO.

No. 2.

THE PEOPLE OF PUERTO RICO, Plaintiff,

v.

RUBERT HERMANOS, INC., Defendant.

QUO WARRANTO.

AMENDED COMPLAINT.

[Filed February 26, 1937.]

Now comes The People of Puerto Rico, by its Attorney General Benigno Fernandez Garcia, and respectfully complains against Rubert Hermanos, Inc., respondent herein, a corporation organized and operating under the laws of Puerto Rico, as follows:

(a) Said corporation, Rubert Hermanos, Inc., was organized under the laws of Puerto Rico on April 21, 1927, and its articles

of incorporation were filed in the office of the Executive Secretary of Puerto Rico on April 27 of the same year. A certified copy of the articles of incorporation of the defendant company, marked "Exhibit A", is attached to the present complaint as a part thereof.

(b) The aims or purposes sought by the said domestic corporation in organizing itself, which were authorized by the approval of its articles of incorporation, are, among others, as follows: to exploit agriculture in general; to acquire, develop and manage undertakings, having for their object the planting, cultivation and harvesting of sugar cane; to plant, cultivate and harvest sugar cane plantations thus working the lands in its possession; and to purchase and hold farms and plantations.

(c) Subdivision (f) of section 4 of the aforesaid articles of incorporation, provides, however, that the right of the aforesaid corporation to hold and control land in the Island of Puerto Rico is restricted to 500 acres only, such restriction being expressly described in conformity with the restrictions established in section 3 of the Joint Resolution of the Congress of the United States of America, approved May 1, 1900 (Joint Resolution No. 23, 56th Congress, First Session, 31 Statutes at Large 716, Code of the United States, Title 48, Section 752).

(1) The aforesaid domestic corporation was thus authorized to engage in agriculture, was restricted by its articles of incorporation to own and control not more than 500 acres, and was warned by said articles of incorporation that the aforesaid restriction was imposed by law. Yet notwithstanding the express prohibition contained in its articles of incorporation and besides in open violation of Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716, United States Code, Title 48, Section 752), said corporation owns and controls at present in full ownership, and has owned and controlled for some time, several estates in excess of 500 acres, which it applies to the planting, cultivation and harvesting of sugar cane. The aforesaid estates are described in the enclosed certificates marked "Exhibits B and C" and made part of this complaint.

(e) The total area of farming land which the defendant corporation now owns and controls and which, as already stated, it applies to agriculture, covers some 12,188 acres.

(f) The holding and control by the defendant of land forming large estates, as hereinbefore alleged, is contrary to the public policy long established and frequently declared of The People of Puerto Rico and is clearly in conflict with the economic well being of The People of Puerto Rico.

1. The public policy of The People of Puerto Rico against the holding and control of land in large estates by organized companies representing accumulations of capital as was first enunciated by Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900 (31 Statutes at Large 716, Code of the United States, Title 48, Section 752) has been frequently reiterated and strengthened by administrative authorities of The People of Puerto Rico, specifically including (and this does not limit the above general principles) House Bill No. 13, Second Special Session of the 13th Legislature, June 26, 1935, (approved by the House of Representatives); substitute Senate Bill for House Bill No. 13; Second Special Session of the 13th Legislature (approved by both Houses of the Legislature and vetoed by the Governor because in his opinion it was not sufficient to meet the policy therein declared); Act No. 33, of the 13th Legislature, Second Special Session, approved July 22, 1935; Act No. 47, 13th Legislature, Second Special Session, approved August 7, 1935; Act No. 48, 13th Legislature, Second Special Session, approved August 7, 1935; Act No. 44, 13th Legislature, Second Special Session, and the Senate Resolution of February 13, 1935.

2. The total area of Puerto Rico is only some 3,435 square miles, that is, some 2,198,400 acres, of which only 1,222,284 are fit for cultivation. The population of Puerto Rico in 1930 was 1,543,913 inhabitants and according to conservative estimates the present population amounts to 1,700,000, giving an average of 494.9 persons per square mile. This shows an increase of population from 325.5 persons per square mile in 1910 to 378.4 in

1920, and to 449.5 in 1930. Of this population, 72.3 per cent live in rural zones and depend entirely on agricultural pursuits for their subsistence. Thus in the Island, there is only an average of something less than one acre of land, fit for cultivation, per rural person directly depending thereon for his subsistence.

3. Out of the aforesaid 1,222,284 acres of land fit for cultivation, some 251,000 acres or something over $1/5$ are applied to the production of sugar. Of such lands thus applied to the production of sugar, not less than 196,757 acres, or something over 72 per cent, which is above 16 per cent of the total area fit for cultivation, is owned or controlled by organized companies representing aggregate capital belonging almost exclusively to absent stockholders. Normally, the sugar output is 67 per cent of the agricultural wealth of Puerto Rico. The organized companies above referred to produce, normally, 59 per cent of the total output of sugar in the Island, thus controlling almost 40 per cent of the total agricultural wealth. During the decade from 1920 to 1930 the total area of the estates in Puerto Rico, managed by their owners decreased by 318,232 acres and the area of estates managed by directors increased by some 325,425 acres. The total farming area covers approximately 1,979,474 acres, and thus almost one-sixth of the total farming area has been transformed from estates managed by their owners to farms worked by directors during a single decade.

Therefore, The People of Puerto Rico, through its aforesaid Attorney General, prays this Honorable Court to adjudge the said domestic corporation to have forfeited its franchise, to order its immediate dissolution, to prohibit it to do business in Puerto Rico and to impose on the same the proper fine, with all other pronouncements which in equity and justice are pertinent in the premises.

THE PEOPLE OF PUERTO RICO,

by BENIGNO FERNANDEZ GARCIA,

Attorney General.

Copy served this twenty-fourth day of February, 1937.

J. SIFRE, Jr.,

Attorney for the Respondent.

[Title omitted.]

ANSWER OF DEFENDANT, RUBERT HERMANOS, INC.

[Filed August 19, 1937.]

Now comes the defendant, Rubert Hermanos, Inc., through its undersigned attorneys and without waiving its demurrer to the jurisdiction of this court or its other demurrers filed in this proceeding and in answer to the amended complaint respectfully alleges and says:

I. It admits the averments made in paragraph (a) of the amended complaint.

II. Of the averments made in paragraph (b) of the amended complaint this defendant admits that among the purposes or objects which it was authorized by its Articles of Incorporation to pursue there are included that of devoting itself to agricultural pursuits in general; the purchase, development and management of enterprises having as their object the planting, cultivation and harvesting of sugar cane; the planting, cultivation and harvesting of sugar cane, in that way developing the lands in its possession, and purchasing and possessing estates and plantations; but this defendant alleges that the above are not the only objects or purposes for which it was incorporated, and that it was also authorized by its charter to engage in the Island of Puerto Rico or elsewhere in the manufacture of sugar, molasses, and other by-products of sugar, and to buy, sell, and in general to trade in sugar either raw or refined, in molasses and other by-products of sugar and to build up, purchase, own, lease or in any other way acquire, develop, promote, organize, handle, conduct and manage enterprises having for their aim and object the manufacture and sale of sugar either raw or refined, molasses and other by-products

of sugar, and to erect, purchase or in any other way acquire centrals, mills, establishments or factories, with all the buildings, installations, annexes, accessories and implements necessary or suitable for the manufacture and preparation of sugar, molasses, and other by-products of sugar. The defendant further alleges that by section 4 of its charter it was authorized to engage in any and every object or purpose as mentioned in the said section.

III. Of the averments made in paragraph (c) of the amended complaint it admits that subdivision "f" of the articles of incorporation provides, among other things, that the right of the corporation to own and control land in the Island of Puerto Rico shall be limited to five hundred acres only and that this right is "subject to the restrictions established by Section 3 of the Joint Resolution of May 1, 1900, approved by the Congress of the United States of America", but it contends that the five hundred acre limitation is applicable in the event that the defendant should wish to engage in "agriculture" as its main object and that the other restrictions of the said Joint Resolution of which mention is made herein are applicable to this corporation in the pursuit by it of the manufacture of sugar which is an industrial pursuit, and such restrictions prohibit it from holding or possessing real property except such as may be reasonably necessary to enable it to carry out the purposes for which it was created.

IV. In answer to the averments in paragraph (d) of the amended complaint, this defendant admits having been authorized to engage in agriculture, but it alleges that it was also authorized to engage in all or any of the purposes and objects mentioned in its charter, which also include the manufacture of sugar and molasses, which is a purely industrial pursuit. The defendant admits that according to its charter, "the right of the corporation to own and control land in the Island of Puerto Rico shall be limited to five hundred acres only, and subject to the restrictions established in Section 3 of the Joint Resolution of May 1, 1900, as approved by the Congress of the United States of America", but it alleges that the restriction or prohibition in regard to owner-

ship and control of not more than five hundred acres does not apply to this defendant as regards the authority expressly given to it by the franchise granted it by The People of Puerto Rico to engage also in industrial objects and purposes, jointly with the other objects or purposes or to the exclusion of any one of them. This defendant alleges that among the various purposes for which it was incorporated under the express authority of its franchise it chose as its main purpose or object the manufacture and production of sugar and molasses for sale in the Island and in continental United States, and to this end it acquired a sugar central or factory generally known as "Central San Vicente", located in the municipal district of Vega Baja, in this Island, with machinery, equipment, annexes, private railway, telephone system and other holdings and properties required for the manufacture of sugar and molasses; that from time to time this defendant has made improvements on said factory to such an extent that it has now become a modern factory equipped with the means of turning sugar cane into raw sugar and molasses. This defendant further alleges that the said factory has capacity for grinding during each grinding season or industrial year as much as 350,000 tons of cane; that this defendant for the purpose of securing part of the raw materials necessary to enable it to engage in the manufacture of sugar and in the sugar industry, and making use of an implied and incidental faculty or power, also acquired the land reasonably necessary in order to obtain therefrom, through the planting and cultivation of sugar cane, part of the sugar cane which it must grind during each grinding season in its industry of manufacturing sugar and producing sugar and molasses, and that the land thus acquired for this purposes and object does not furnish all the cane needed to be ground in each grinding season or industrial year; that the defendant could not engage in the manufacture of sugar upon an efficient and economic basis if it had to depend entirely on the cane that might be purchased from planters and other persons; that this defendant must count during each grinding season or industrial year upon a minimum of cane

of its own or grown by it in order to be able to operate and run its business in an economic and efficient manner and that the lands acquired and owned by it at present are those which it indispensably and reasonably requires in order to obtain part of the raw material, without which it could not engage in the manufacture of sugar and molasses on an economic and efficient basis; this defendant alleges that in engaging, as it has done, in the manufacture of cane sugar and molasses, through the acquisition, within its implied and incidental powers, of the land reasonably necessary to enable it to carry out the above purpose, that is, to obtain part of the raw material, it has not violated either its franchise or the Joint Resolution of May 1, 1900, nor any part or provision whatever of said franchise or of the said Joint Resolution.

In answer to the averments made in paragraph (e) of the amended complaint, this defendant admits that it owns and controls the lands mentioned in said paragraph (e), but denies to be engaged in agriculture on said lands or on any part thereof, as a principal corporate object or purpose, and on the contrary alleges that it devotes part of said lands, using the incidental and implied power which it has to the planting and cultivation of sugar cane, as a means of obtaining part of the raw material, *i.e.*, sugar cane which is indispensable to this defendant in its industry of manufacturing and producing for sale, sugar and molasses, which is the principal object or purpose to which this defendant devotes itself and has devoted itself ever since it started in business, and without such raw material this defendant would be unable to engage in the manufacture of sugar. This defendant alleges that part of its lands are used for roads and other requirements of the corporation; that the defendant's factory as well as other buildings are erected thereon and that not all of said lands are suitable for growing cane, nor are they all devoted to the growing of cane.

VI. In answer to the averments made in paragraph (f) of the amended complaint, this defendant denies that the holding or control of lands owned by the defendant or of any part thereof is or ever has been contrary to the public policy of The People

of Puerto Rico; it denies that the ownership or control of its lands or any part thereof is or has ever been in conflict with the material well-being of The People of Puerto Rico.

In answer to the averments made in subdivision (1) of paragraph (f) of the amended complaint, this defendant denies that Joint Resolution No. 23 of the 56th Congress, 1st Session, approved on May 1, 1900, or any part thereof, sets or has set forth or enunciated any public policy forbidding the concentration of land in large holdings by corporations, and alleges on the contrary that the limitation imposed by such law on the holding and control of not more than five hundred acres solely and exclusively refers to the concentration of large holdings by agricultural corporations, other non-agricultural corporations being allowed or authorized by the said Joint Resolution to own and hold as much real property as is reasonably necessary to enable them to carry out the purposes for which they are created, and the defendant alleges that such non-agricultural corporations may, without incurring in the violation of any statute, control and own large tracts of land if that is reasonably necessary to enable them to carry out their purposes. This defendant alleges that non-incorporated associations as well as civil partnerships, trusts and other non-corporate companies and entities may, without incurring in any violation of any law, own and control in this Island land in large holdings and that as a matter of fact partnerships and other unincorporated companies own and control in Puerto Rico large tracts of land. This defendant denies that any public policy against the holding or control of land concentrated in large tracts has been affirmed or strengthened by the authorities or by any of the governmental officers of The People of Puerto Rico, although it is admitted by this defendant that the present Attorney General and some other officers have gone on record as opposed to the holding or control of land in excess of five hundred acres. This defendant, however, alleges, on information and belief, that more than thirty years elapsed after the passage of said Joint Resolution without The People of Puerto Rico taking any action in the courts

involving the holding or control of land by corporations, and this defendant further alleges, on information and belief, that for more than thirty years The People of Puerto Rico has, by its inaction, tolerated and consented to the holding and control of large tracts of land by sugar corporations, it being aware of the number of cuerdas of land possessed by such corporations, upon which it collected taxes, licenses and other imposts.

This defendant denies that any public policy has been affirmed or strengthened by House Bill No. 13 of the 13th Legislature, Second Special Session, of June 26, 1935, or by Senate Bill in substitution of House Bill No. 13, of the 13th Legislature, Second Special Session, nor by the aforesaid Resolution of the Insular Senate of February 13, 1930, or by any of the aforesaid bills; and it, on the contrary, alleges that said Senate bills, and resolution never did or could set up any public policy of The People of Puerto Rico against the holding or control of lands concentrated in large holdings, or in any other sense or manner, as said bills or resolution were never enacted into laws. For lack of information and belief to enable it to answer if the said substitute Senate bill was vetoed by the Governor of Puerto Rico on the ground, that in his opinion, it was insufficient to establish the so-called public policy which it claims to declare, or any other policy, this defendant, therefore, denies said allegation in whole and in part, and on information and belief, denies that Act No. 33 of July 22, 1935, or Acts Nos. 47 and 48 of August 7, 1935, or Act No. 44 of August 6, 1935; or any of said Acts or part thereof, express the so-called public policy referred to by plaintiff. This defendant further alleges that the said Acts Nos. 44 and 48 of August 6 and 7, 1935, respectively, refer to amendments to the Eminent Domain Act of 1903 in the event that any general plan of reconstruction "be first approved by the Finance Committee of the Legislature of Puerto Rico", and to the imposition of penal sanctions by district courts for violations of the provisions of the Joint Resolution of Congress of May 1, 1900.

In answer to the averments made in subdivision 2 of paragraph

(f) of the amended complaint, this defendant admits that Puerto Rico has an area of 3,435 square miles or some 2,198,400 inhabitants; it likewise admits that the population of this Island according to the 1930 census was 1,543,913 inhabitants and that the number of people per square mile went up from 325.5 persons in 1910 to 378.4 in 1920 to 449.5 in 1930, and this defendant denies all the other particulars set out in subdivision 2 of paragraph (f) of the amended complaint in general and each of them in particular for lack of information and belief.

For lack of information and belief this defendant can not answer the averments made in subdivision 3 of paragraph (f) of the amended complaint and it therefore denies all such matter and particulars in general and each of them in particular.

As new matter and as separate and special defences, this defendant respectfully alleges as follows:

1. That of the several purposes or objects for which it was incorporated and expressly authorized by its franchise, this defendant chose as its main purpose or object the manufacture and production of sugar and molasses in the Island of Puerto Rico to be sold in this Island and in the continental United States and for this purpose it acquired a sugar central or factory located in the municipal district of Vega Baja of this Island with machinery, equipment, annexes, a private railway, a telephone system and other articles and properties required for manufacturing sugar and molasses; that the sugar and molasses manufactured by this defendant in its factory are obtained from sugar cane without which this defendant could not and can not manufacture in said factory sugar and molasses; that in order to obtain and secure at least part of the raw material indispensable for operating and running its factory and to be able to engage in the sugar industry, upon an economic and efficient basis, availing itself of the incidental or implied power which it has, it likewise acquired the land reasonably necessary to enable it to engage in the manufacture of sugar and molasses and to meet other needs of the business or undertaking of this corporation, in which it has invested several million

dollars and without which it could not engage in the said business; that it derives from part of such land, through the planting and cultivation of sugar cane, part of the cane required to be ground in each grinding season or industrial year so that this defendant may run and operate its central or sugar factory on an efficient and economic basis, and that the remaining sugar cane needed in each grinding season or industrial year is obtained by this defendant by purchase from several planters who sell their crops to it; that this defendant would be unable to engage in the industry of manufacturing sugar on an efficient and economic basis if it had to depend entirely on the sugar cane that it might purchase; that this defendant must have canes of its own or grown by it in order to be sure of at least part of the canes which it must grind during each grinding season or industrial year. This defendant further alleges that out of about 183,968.92 tons of canes ground in its factory during the grinding season or industrial year of 1935, about 116,370.12 came from planters and the remainder from canes grown on land of this defendant; that during the grinding season or industrial year of 1936, about 240,343.50 tons of canes were ground in its factory, of which about 147,586.66 came from planters and the remainder from canes grown on land of this defendant; that during the grinding season or industrial year of 1937, about 292,468.14 tons of canes were ground in its factory, of which about 169,134.38 tons came from planters and the remainder from canes grown on land of this defendant, and that in none of these years did the defendant have the number of tons of canes required for running defendant's factory at full capacity.

2. This defendant alleges that the Joint Resolution of Congress which in Section 3 provides for restrictions in regard to the holding and control of lands by corporations was enacted in the year 1900; that since then and until recently, from time to time, various corporations have been organized in Puerto Rico to engage in the manufacture of sugar which is the principal and most important industry in the Island, upon which thousands of workmen and laborers depend for their subsistence, and that many of such cor-

porations, according to the information and belief of the defendant, gradually acquired real property in excess of the five hundred acres in order to grow thereon the amount of sugar cane necessary and indispensable for manufacturing sugar and molasses; that many millions of dollars have been invested in the sugar industry in Puerto Rico and that many of the corporations engaged in such industry have issued and sold stock to residents and non-residents who acquired the same in good faith. The defendant alleges, on information and belief, that The People of Puerto Rico tolerated, allowed and encouraged the development of the sugar industry during all these years until it reached the present stage; and this defendant further alleges, upon information and belief, that never during all that time were any proceedings brought challenging or questioning the right of a sugar corporation to own and control more than five hundred acres, provided this was reasonably necessary in order to obtain the raw material for the purpose of manufacturing and producing sugar and to engage in the sugar industry; that The People of Puerto Rico collected and still collects taxes upon the property of such corporations, as well as other taxes and imposts, and that through the Government's officers, departments and other agencies it always had or could have had information as to the land acquired by most of the corporations engaged in the sugar industry, and that in spite of that it was not until 1936 when, according to the information and belief of this defendant, The People of Puerto Rico for the first time brought proceedings questioning or challenging the right of a corporation, engaged like this defendant in the sugar industry, to hold or control land in excess of five hundred acres, whenever this was necessary in order to obtain the raw material or part thereof, that is, sugar cane, to be ground in its factory; that this defendant acquired the sugar central or factory, as well as practically all the lands which it owns, in 1927, and that since then this defendant has been using the factory and its lands in the business of manufacturing cane sugar and molasses, getting from some of said land part of the raw material required for such

manufacture or industry, namely, sugar cane, and that during all these years this defendant has done so publicly, its lands being recorded in its name in the registries of property in the Island of Puerto Rico, with the knowledge of the officers and departments of the Government of Puerto Rico, it having paid during all these many years to the Government of Puerto Rico taxes on its properties, including its lands, as well as other taxes and imposts without the Government of Puerto Rico or any of its departments or agencies objecting, until these proceedings were brought, to the business of this defendant or to its owning or controlling land in excess of five hundred acres in order to provide itself with canes to be ground in its factory, for which reason the plaintiff, because of its acquiescence and delay in suing, is barred from cancelling the franchise of this corporation.

For the foregoing reasons this defendant respectfully prays the court to dismiss, in due course of law, the amended complaint filed by The People of Puerto Rico in the present case.

San Juan, Puerto Rico, August 19, 1937.

JAIME SIFRE, JR.,

ORLANDO J. ANTONSANTI,

Attorneys for the Defendant.

I, Jose Gonzalez Hernandez, declare and state on oath that I am of age, married and a resident of Santurce, in the municipality of San Juan, P. R.; that I am vice-president and director of the domestic corporation named Rubert Hermanos, Inc., defendant herein; that as such vice-president and director I am acquainted and familiar with the affairs and business of the defendant corporation; that I have read the foregoing answer and that the facts therein stated are true as they are known to me personally, except where they are alleged in the said answer on information and belief, which I also believe to be true, and that this oath is not taken by Rubert Hermanos, Inc., as being a corporation and the same is taken by affiant as its vice-president and director.

JOSE GONZALEZ HERNANDEZ

AFFIDAVIT NO. 1053.

Sworn to and subscribed before me by Jose Gonzalez Hernandez, of age, married, property owner and a resident of Santurce, in the municipality of San Juan, Puerto Rico, vice-president and director of the domestic corporation Rubert Hermanos, Inc., and who is personally known to me.

San Juan, P. R., August 19, 1937.

RAMON C. JULIA,

Notary Public.

Served with copy this nineteenth day of August, 1937.

B. FERNANDEZ GARCIA,

Attorney General of Puerto Rico.

[Title omitted.]

JUDGMENT.

San Juan, Puerto Rico, July 30, 1938.

For the reasons stated in the foregoing opinion, judgment is hereby rendered in favor of The People of Puerto Rico, petitioner herein, and against Rubert Hermanos, Inc., defendant, with the following pronouncements.

1. It is adjudged and decreed that the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land in violation of the provisions of Joint Resolution No. 23 of the Congress of the United States (31 Statutes at Large 716, U.S.C.A., Title 48, sec. 752), of section 39 of the Organic Law of Puerto Rico and of its own articles of incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres.

2. The forfeiture and cancellation of the license of the defendant corporation and of its articles of incorporation is hereby ordered and decreed, as well as the immediate dissolution and winding up of the affairs of said corporation.

3. The defendant corporation is adjudged to pay the costs and disbursements of this proceeding, including the sum of two thousand dollars (\$2,000) as attorney's fees.

4. The defendant corporation is sentenced to pay a fine in the sum of \$3,000.

It was thus pronounced and ordered by the court as witness the signature of, the Chief Justice. Mr. Justice Wolf concurred in many parts of the opinion and in the first pronouncement of the judgment. As regards some of the other pronouncements he has some doubts as to the power of the court, which might perhaps be cleared up after a more careful study, and he has also some doubts, even if the court had such power, whether the same should be exercised in the way it has been done, reserving to himself a fuller statement of his views. Mr. Justice de Jesus took no part in the decision of this case.

EMILIO DEL TORO,

Chief Justice.

Attest: B. MARRERO RIOS, *Acting Secretary.*

[Title omitted.]

MOTION FOR THE APPOINTMENT OF A RECEIVER.

[Filed July 30, 1938.]

Now comes The People of Puerto Rico, petitioner herein, through the undersigned Attorney General, and respectfully alleges:

1. This Honorable Court has recently rendered judgment in the, above-entitled case (1) ordering the dissolution of the respondent corporation and (2) decreeing the forfeiture and cancellation of the license of the respondent corporation.

2. Such dissolution and disposition of the property of the respondent shall be entrusted to a receiver.

In view of the foregoing and pursuant to the provisions of subdivisions 4 and 5 of Section 182 of the Code of Civil Procedure in force, The People of Puerto Rico prays this Honorable Court

to make an order for the appointment of a receiver in accordance with law.

B. FERNANDEZ GARCIA,
Attorney General.

MIGUEL GUERRA-MONDRAGON,
RAFAEL RIVERA ZAYAS,
Counsel.

[Same title.]

ORDER.

San Juan, Puerto Rico, November 9, 1938.

The motion of the plaintiff, duly notified, requesting that its motion for the appointment of a receiver filed July, 30, 1938—hearing of which had been set for this date—be left in abeyance, is hereby sustained.

It was so ordered by the court as witness the signature of the Chief Justice.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Title omitted.]

[Filed March 28, 1940.]

To the Clerk of the Supreme Court of Puerto Rico:

Sir: We beg to hand you herewith the sum of six thousand dollars (\$6,000) in United States currency to be applied to the payment of the judgment rendered herein on July 30, 1938, to wit:

\$3,000 to cover the fine;

\$2,000 to cover attorney's fees; and

\$1,000 which we consider sufficient to cover the costs.

Should the latter amount to a sum in excess of the one enclosed

herein, we shall remit the difference as soon as we are informed of the fact.

This money is placed at the disposal of the complainant.

We imagine that the court shall decide whether this amount must remain in deposit until it receives the mandate from the Supreme Court of the United States or whether it shall be delivered now to the complainant.

San Juan, Puerto Rico, March 28, 1940.

JAIME SIÈRE, JR.,

J. HENRI BROWN,

Attorneys for the Respondent.

[Title omitted.]

ORDER.

San Juan, Puerto Rico, March 30, 1940.

The court having been notified of the foregoing document filed by counsel for the respondent, it hereby orders that the sum of \$6,000 received by the secretary-reporter be deposited until further notice in a bank of well-known reputation, and the final disposition of said sum is left in abeyance until the mandate is received from the Supreme Court of the United States.

It was so ordered by the court as witness the signature of the Chief Justice.

EMILIO DEL TORO,

Chief Justice.

Attest JOAQUIN LOPEZ, *Secretary-Reporter.*

[Title omitted.]

MOTION REQUESTING SETTING OF MOTION FOR THE APPOINTMENT OF A RECEIVER.

[Filed May 13, 1940.]

Now comes The People of Puerto Rico by its Attorney General and respectfully states that:

1. On July 30, 1938 The People of Puerto Rico filed the follow-

ing motion requesting from this Honorable Court the appointment of a receiver, as follows:

"Now comes The People of Puerto Rico, petitioner herein, through the undersigned Attorney General, and respectfully alleges:

"1. This Honorable Court has recently rendered judgment in the above-entitled case (1) ordering the dissolution of the respondent corporation and (2) decreeing the forfeiture and cancellation of the license of the respondent corporation.

"2. Such dissolution and disposition of the property of the respondent shall be entrusted to a receiver.

"In view of the foregoing and pursuant to the provisions of subdivisions 4 and 5 of Section 182 of the Code of Civil Procedure, in force, The People of Puerto Rico prays this Honorable Court to make an order for the appointment of a receiver in accordance with law."

By order of July 30, 1938, this Honorable Court set the hearing of the aforesaid motion for November 9, 1938, at 2 P.M.

On November 9, 1938, The People of Puerto Rico moved this court to stay the hearing of the aforesaid motion until the superior courts decided the appeal taken by the respondent corporation, from the judgment rendered by this Honorable Court on July 30, 1938.

2. On this day—May 13, 1940—at 8:57 A.M., the clerk of this Honorable Court received notice from the Supreme Court of the United States to the effect that said high tribunal had affirmed under date of March 25, 1940, the judgment rendered by this court on July 30, 1938, and remanding, furthermore, the cause for further proceedings.

Wherefore, The People of Puerto Rico prays again that the motion for the appointment of a receiver be set for a date in the near future.

Respectfully,

GEORGE A. MALCOLM,

Attorney General.

MIGUEL GUERRA-MONDRAGON,

RAFAEL RIVERA ZAYAS,

LUIS VENEGAS-CORTES,

Of counsel.

[Title omitted.]

ORDER.

San Juan, Puerto Rico, May 23, 1940.

Whereas, on the 13th instant the mandate of the Supreme Court of the United States was received in the above-entitled case and according to same the said superior court reversed on March 25, 1940 the judgment rendered on appeal on September 27, 1939, by the United States Circuit Court of Appeals for the First Circuit;

Whereas, the Supreme Court of the United States sentences the respondent to the payment of costs, amounting, according to the mandate, to the sum of \$78.58 and remands the case to this court for further proceedings not inconsistent with the opinion delivered by that court of last resort;

Therefore, with the object of executing the judgment rendered by the Supreme Court of the United States, the secretary-reporter is hereby authorized to pay to the complainant the following amounts from the sum of \$6,000 deposited under his custody by the respondent:

To pay the fine to which the respondent was sentenced by this court on July 30, 1938	\$3,000.00
To pay the attorney's fees of the complainant to which the respondent was sentenced by this court on July 30, 1938	2,000.00
To pay the costs granted to the complainant by the judgment rendered by the Supreme Court of United States	78.58
Total	\$5,078.58

It was so ordered by the court as witness the signature of the Chief Justice.

EMILIO DEL TORO,

Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Title omitted.]

ORDER.

San Juan, Puerto Rico, June 4, 1940.

The hearing set for the th instant of the motion for the appointment of a receiver, is hereby transferred to June 24, 1940, at 2 P.M.

It was so ordered by court as witness the signature of the Acting Chief Justice.

ADOLPH G. WOLF,

Acting Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Title omitted.]

ANSWER AND OPPOSITION TO THE MOTION FOR THE APPOINTMENT OF A RECEIVER.

[Filed June 24, 1940.]

Now come Manuel Gonzalez Martinez, Rafael Martinez Dominguez, Jose Gonzalez Hernandez, Aureo Garcia and Gabriel Soler, as liquidating trustees of the respondent corporation Rubert Hnos. Inc., by their undersigned attorneys, and by way of answer and opposition to the motion for the appointment of a receiver, state:

I. The judgment of the court has been complied with. The corporation has been dissolved, its obligations have been extinguished and it has disposed of its properties by unanimous agreement of its stockholders and of the liquidators appearing herein.

Transcript of Record.

II. Even if the corporation had not been liquidated, this court lacks jurisdiction in this proceeding to appoint a receiver because:

- (a) The Quo Warranto Act does not authorize the court to appoint a receiver in such proceeding.
- (b) The quo warranto proceeding is not pending, but has been finished;
- (c) Neither the Attorney General nor The People of Puerto Rico are empowered or authorized by law to request the appointment of a receiver in a quo warranto proceeding or in a proceeding for the dissolution of corporations.

III. Even in the supposition that jurisdiction and statutory authority existed for the appointment of a receiver the motion should be denied because:

- (1) The motion is insufficient and does not state facts justifying the appointment of a receiver;
- (2) The appointment of a receiver would deprive those who were stockholders of the corporation of their property and rights without due process of law; and
- (3) The appointment of such receiver would amount to judicial legislation by the court and would violate the prohibition against ex post facto legislation contained in the Organic Act of Puerto Rico.

By virtue whereof they respectfully request that the motion for the appointment of a receiver be overruled.

San Juan, Puerto Rico, June 24, 1940.

JAIME SIFRE, JR.,
HENRI BROWN,

Attorneys for the Respondent.

Copy served this twenty-fourth day of June, 1940.

GEORGE A. MALCOLM,

Attorney General of Puerto Rico,

by MIGUEL GUERRA-MONDRAGON, Attorney.

[Title omitted.]

MINUTES OF THE HEARING OF THE MOTION FOR THE
APPOINTMENT OF A RECEIVER.

San Juan, Puerto Rico, June 24, 1940.

In the City of San Juan, Puerto Rico, at 2 P.M. of the day above stated, and before Chief Justice del Toro and Associate Justices Wolf, Hutchison, Travieso and De Jesus, the aforesaid motion was heard.

Attorney Miguel Guerra-Mondragon appeared in behalf of the complainant and attorneys Jaime Sifre, Jr., and Henri Brown for the respondent.

At the request of both parties the court granted them a simultaneous term of ten days to file briefs and ten additional days, also simultaneous, to reply thereto.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter*.

[Title omitted.]

COMPLAINANT'S BRIEF IN SUPPORT OF ITS MOTION
FOR THE APPOINTMENT OF A RECEIVER.

[Filed July 5, 1940.]

Statement.

On July 30, 1938, this Honorable Court entered final judgment in this case with a pronouncement, *inter alia*, ordering and decreeing "the forfeiture and cancellation of the license of the defendant corporation and of its articles of incorporation" and also ordering "the immediate dissolution and winding up of the affairs of said corporation".

On the same date, July 30, 1938, The People of Puerto Rico petitioned this Honorable Court to appoint a receiver to carry out the dissolution and disposal of the property of the defendant corporation in accordance with subdivisions 4 and 5 of Section 182 of the Code of Civil Procedure then in force. (Page 777 of the 3rd section of the record of this court.)

On August 3, 1938, defendant corporation appealed from the aforementioned judgment to the Circuit Court of Appeals, First Circuit.

On the said third day of August, 1938, this court called the parties for the purpose of hearing them "regarding the amount of the bond which should be required for the purpose of suspending the execution of the judgment once the appeal is allowed".

On August 6, 1938, The People of Puerto Rico (in its memorandum on the question of the supersedeas bond) contended that the amount of the bond should be sufficient to secure the preservation of the *status quo*. Defendant corporation, in its memorandum of August 6, 1938, on the question of the supersedeas bond, contended that a bond of \$15,000 would be sufficient inasmuch as the interest of The People of Puerto Rico, if it had any interest in the properties of defendant, would be "completely protected by the *lis pendens* annotation made in the Registry of Property upon petition of The People of Puerto Rico".

On August 9, 1938, this court allowed the appeal and fixed the amount of the supersedeas bond in the sum of \$25,000.

The appeal was properly prosecuted before the Circuit Court and said court on September 27, 1939, reversed the judgment which had been rendered by the Supreme Court of Puerto Rico on July 30 of the preceding year.

The People of Puerto Rico within the time granted by law duly filed a petition for certiorari in the Supreme Court of the United States. The writ was issued, and after a hearing, the Supreme Court of the United States entered judgment on March 25, 1940, reversing the Circuit Court of Appeals and affirming the judgment rendered by this Honorable Supreme Court on July 30, 1938.

On May 13, 1940, the clerk of this Honorable Court received the mandate of the Supreme Court of the United States. On that same day The People of Puerto Rico petitioned this court to set

a hearing on the motion for the appointment of a receiver. This court set the hearing for this matter for the fifth day of June of the present year.

On June 4, 1940, this court continued the hearing for the 24th of June, 1940, at 2 o'clock in the afternoon.

After the hearing on said date, the parties agreed, with the approval of the court, to submit the question of the appointment of a receiver by the filing of briefs. This is the brief of petitioner.

Principal Objective of the Motion Under Discussion.

The principal objective of the motion for the appointment of a receiver now under discussion is the preservation of the *status quo* (until the proceeding is terminated) with regard to the lands which defendant possesses in excess of 500 acres.

This matter is governed by Act No. 47 (Special Session) approved on August 7, 1935. This statute, which amends the quo warranto Act of 1902 provides in the second paragraph of Section 2 that "The People of Puerto Rico may, at its option, *through the same proceedings*, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered. In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

Contrary to defendant's allegation in its "Answer in Opposition to the Motion for the Appointment of a Receiver", the words "through the same proceeding", copied above and underlined, do not signify a different proceeding from the quo warranto proceeding originally filed, but rather the same quo warranto proceeding filed and prosecuted against defendant in question. This contention is supported by other words of the same Act No. 47 of 1935 which we have invoked (2nd paragraph, Section 6) whereby it is provided that when The People of Puerto Rico has chosen to confiscate the real property or it is ordered that the same shall be

sold at public auction, the final judgment shall fix the reasonable price to be paid for the real property of any defendant.

Final judgment was rendered on May 13, 1940; if we take as the date thereof the day on which the mandate was received by the clerk of the Supreme Court. The People of Puerto Rico have until six months thereafter—until November 13, 1940—to elect whether they will file eminent domain proceedings or ask for a public auction in this same quo warranto proceeding. And it is for the purpose of maintaining the *status quo* that a receiver should be appointed by this Honorable Court until The People of Puerto Rico decides which of these two courses it will elect to take in the future.

If The People of Puerto Rico have this right of election and such election may be exercised within a term of six months "counting from the date on which final sentence is rendered" it is only just that this Honorable Court should protect this right.

It is not difficult to determine the intention of the legislator in this respect. Once the dissolution of the corporation is decreed by judgment in a quo warranto proceeding on the ground that it has been guilty of violating the 500 acre law, it was the legislator's intention that the government should retain a certain degree of control over the excess lands in order that its future distribution should comply with the fundamental spirit of the agrarian law—distribution among many farmers—and that said lands should not fall again into the same or a few hands. We do not believe that the local legislature—using the words of Justice Frankfurter—intended that his decrees should be "mere empty words" or that he "was bent on the elaborate futility of brutum fulmen" in approving this legislation. We do not believe that the legislator wished to encourage the construction of a farsical edifice in proceedings of this gravity thus permitting corporations who have been guilty of violating a great social policy to escape as they see fit the sanctions established by the laws by dissolving themselves in their own manner and disposing of their lands ac-

according to their choice and will as the defendant corporation now purports to do.

A receiver may be appointed (subdivision 4, Section 182, Code of Civil Procedure) "in the case when a corporation has forfeited its corporate rights". The judgment in the present case contains such a pronouncement: "Ordering and decreeing the forfeiture and cancellation of the license of the defendant corporation, of its articles of incorporation." It is well to keep this particular point in mind so as to avoid confusion with other grounds for the appointment of a receiver. In effect:

Subdivision 4 of section 182, Code of Civil Procedure, provides that a receiver may be appointed—

1. In the case when a corporation has been dissolved.
2. Or is insolvent.
3. Or in imminent danger of insolvency.
4. Or has forfeited its corporate rights.

It is this last ground upon which the present motion is based. And it is well to keep this in mind so that we may be able to distinguish one case from another in reading the authorities on this matter.

The Respondents.

The attorneys for the defendant state that Messrs. Gonzalez Martinez, Martinez Dominguez, Gonzalez Hernandez, Garcia and Soler appear in their capacity as trustees in liquidation of defendant to answer and oppose the petition for the appointment of a receiver.

We deny the right of these gentlemen to appear and intervene in this proceeding and more so when they have not even attempted to show their respective capacities by means of proper evidence. They do not even verify their opposition.

The Opposition.

Assuming that the aforementioned gentlemen have sufficient capacity and personality to intervene, their opposition is frivolous.

They allege in the first place that the judgment of the court

has been complied with. To this we answer that the judgment of the court will not have been complied with until The People of Puerto Rico exhaust the remedies granted to them by Act No. 37 of 1935; that is, the option to which we have referred.

They allege in the second place that the corporation has been dissolved. To this we reply that the defendant corporation has not yet been dissolved. Corporations arise or are organized not when the incorporators sign the articles of incorporation, but, as provided in section 8 of the law of corporations (Code of Commerce, 1932 Edition, p. 332) when the executive secretary so certifies. And corporations cease to exist or are dissolved not when the stockholders agree so to do, but, as provided in Section 26 of the law of corporations (Code of Commerce, 1932 Edition, p. 355) when the executive secretary issues a certificate of dissolution and that certificate is published during four consecutive weeks in a newspaper of the Island. The aforementioned gentlemen have not offered evidence with regard to these fundamental facts. In turn, we offer to this Honorable Court the certificate which is attached hereto issued by the executive secretary and marked "Exhibit A".

The opposing gentlemen allege that defendant has disposed of its properties. Here, too, they have failed to furnish evidence in support of this allegation. On the other hand, the *lis pendens* granted in this case continues to be recorded in the Registry of Property. We do not know what property is referred to in the answer and motion in opposition.

Jurisdiction.

It is alleged (1) that the court has no jurisdiction to make the appointment of a receiver; (2) that the quo warranto statute does not confer jurisdiction for such an appointment; (3) that this proceeding has already been terminated and (4) that petitioner is not authorized to petition for receivership in quo warranto proceedings or proceedings to dissolve a corporation.

(1) This Honorable Court has jurisdiction. Section 182 of

the Civil Code of Procedure reads as follows: "A receiver may be appointed by the court in which an action is pending or has passed to judgment." The proceeding continues to be pending until the six month option of The People of Puerto Rico hereinbefore mentioned expires. The judgment of the Supreme Court of the United States remanded the case for "further proceedings". And the option referred to is one of these "further proceedings".

(2) The quo warranto statute, a special statute, may not provide for a receivership, but the Code of Civil Procedure, a general statute, which applies to all actions confers such power on the court.

(3) This proceeding is not terminated inasmuch as it is pending the action of The People of Puerto Rico with regard to the aforementioned option.

(4) This is not a proceeding for the dissolution of a corporation, but rather for the forfeiture of a license or charter of corporation. One thing is distinct from the other. And the forfeiture of the license having been decreed, a receivership is the only means of securing the right of The People of Puerto Rico to exercise in due time the option in its favor.

Authorities.

In support of the receivership, we will cite the following cases:

East Line & Red River R. Co. v. State, 12 S.W. 690, 696.

Texas Trunk R. Co. v. State ex rel.; 18 S.W. 199, 201. In this case it was held that the public, the community, has such an interest in the proper management of the property of the corporation that a receiver should be appointed to dispose of the property for the public benefit.

San Antonio Gas Co. v. State, 54 S.W. 289, 293, 294. In this case it was held that a receiver can be appointed when the forfeiture of the articles of incorporation is involved. It is there stated:

"To whom shall the property of the defunct corporation be entrusted, if no receiver be appointed? Appellant answers,

to the president and board of directors of the defunct corporation. Article 682, Sayles' Rev. Civ. St., is the only statute that provides that the president and board of directors shall be trustees and take possession of the property of the corporation, and such provision is made only in cases of the dissolution of a corporation. *That the statute draws a distinction between a dissolution and the forfeiture of a charter is shown by the language of section 3, art. 1465, Id., where provision is made for a receiver in case of dissolution, insolvency, or forfeiture.* When a charter is forfeited, the life of the corporation ceases, and no president and board of directors can survive it, and, unless specially authorized by statute, could not, by virtue of their offices, take control of the property of the corporation. If article 682 could apply to cases in which there has been a forfeiture of a charter by the state, it can only apply when no receiver has been appointed by some court of competent authority. If it be necessary to justify the power given by statute, it may be well to remember that appellant in this case is a quasi public corporation, and for the protection of the public interests it was necessary that a receiver should be appointed. To place the property again in the hands of the officers of the corporation would be to return it to the custody of those who had failed to perform their trust, and had violated the laws of the state, and the public interests would not be subserved thereby. We call attention, in this connection, to *People v. Ice Co.*, 18 Abb. Prac. 382, and *Herring v. Railroad Co.*, 105 N.Y. 540, 12 N.E. 763.

"That the appointment of a receiver will have the effect of a fine inflicted upon the shareholders in the defunct corporation can have no weight in the decision of a court. The statute plainly confides the authority to the court to make the appointment, and that it will bear heavily upon the shareholders is a matter for legislative, and not judicial, consideration. In this case, at least, the violators of the law will be

the ones who will suffer from the appointment of a receiver. We have treated the question of a receivership as though it was an open one in Texas, but it is not. The statute has been construed by the Supreme Court, and it was held that the trial court, when a charter is forfeited, has the authority, under the statute, to appoint a receiver at the instance of the state, independent of the request of a creditor."

This decision also answers the point raised by the respondents to the effect that "the appointment of a receiver would deprive the stockholders of the corporation of their property and rights without due process of law".

In view of the foregoing reasons, it is respectfully requested that the motion for the appointment of a receiver be sustained by this Honorable Court.

Respectfully,

GEORGE A. MALCOLM,

Attorney General.

MIGUEL GUERRA-MONDRAGON,

RAFAEL RIVERA-ZAYAS,

LUIS VENEGAS-CORTES,

Associate Attorneys.

EXHIBIT A.

The People of Puerto Rico.

Office of the Executive Secretary.

Know All Men By These Presents:

That in accordance with a request of the Hon. The Attorney General of Puerto Rico, and for official use, I, E. D. Brown, Acting Executive Secretary of Puerto Rico, do hereby certify: That from the records of this office it appears that "Rubert Hermanos, Incorporada" is a corporation organized under the laws of Puerto Rico and which has not been dissolved up to this date in any of the ways provided by law.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico, at the City of San Juan, this fifth day of July, A.D., nineteen hundred and forty.

E. D. BROWN,

[SEAL]

Acting Executive Secretary

(Issued for Official Use, no fees collected.)

[Title omitted.]

BRIEF IN SUPPORT OF THE "ANSWER AND OPPOSITION
TO THE MOTION FOR THE APPOINTMENT
OF A RECEIVER".

[Filed July 5, 1940.]

Statement.

This court entered judgment on July 30, 1938, whereby the forfeiture and cancellation of the license and articles of incorporation of Rubert Hnos., Inc., was decreed. The immediate dissolution and the winding up of the affairs of the said corporation was also ordered and decreed. Said judgment also sentenced defendant to pay a fine of \$3,000 as well as payment of costs and disbursements of the proceeding including a sum of \$2,000 for attorney's fees. After judgment was rendered, attorneys for petitioner filed a motion asking for the appointment of a receiver, alleging as a ground therefor, that the dissolution and disposal of defendant's property should be carried out by a receiver, and invoking subdivisions 4 and 5 of section 182 of the Code of Civil Procedure as provisions which, in the opinion of petitioner, confer jurisdiction upon this court to enter the order prayed for. Defendant appealed from said judgment to the Circuit Court of Appeals for the First Circuit and the judgment of said appellate court reversing the judgment rendered by this court was reviewed by certiorari by the Supreme Court of the United States which court, in turn, reversed the latter's judgment thus affirming the judgment originally appealed from.

The People of Puerto Rico petitioned for a hearing on the motion for the appointment of a receiver and on the date set by this court for such hearing the trustees in liquidation of Rubert Hnos., Inc., filed an answer in opposition alleging the following:

- I. The judgment of the court has been complied with. The corporation has been dissolved, its obligations have been extinguished and it has disposed of all its property by the unanimous consent of the stockholders and of the appearing trustees in liquidation.
- II. Even though the corporation had not been liquidated this court has no jurisdiction to appoint a receiver in this proceeding because
 - (a) The quo warranto statute does not authorize the court to appoint a receiver in such a proceeding.
 - (b) The quo warranto proceeding or suit is not pending but terminated.
 - (c) Neither the Attorney General nor The People of Puerto Rico are empowered or authorized by law to ask for the appointment of a receiver in a quo warranto proceeding or a proceeding to dissolve a corporation.
- III. Even assuming that there is jurisdiction and statutory authority for the appointment of a receiver the motion should be overruled because:
 - (1) The motion is insufficient and it does not state sufficient facts to justify the appointment of a receiver;
 - (2) The appointment of a receiver would deprive those who were stockholders of the corporation of their property and rights without due process of law; and
 - (3) The appointment of a receiver would constitute legislation by the court and would infringe the prohibition with regard to ex post facto laws contained in the Organic Act of Puerto Rico.

ARGUMENT.

I.

Even under the Assumption that Something Remains to be Done or to Liquidate in Connection with the Extinct Corporation and under the Inadmissible Hypothesis, that this Court has Jurisdiction to Appoint a Receiver, such Appointment would be Contrary to Law because of the Insufficiency of the Motion.

The appointment of a receiver, provided there is jurisdiction to make the appointment, which in this case we deny, rests in the sound discretion of the court. This doctrine has been firmly established by the authorities; in Puerto Rico, construing section 182 of the Code of Civil Procedure and in California construing section 564 of the Code of Civil Procedure of said State, from which our section 182 was almost literally copied: *Schluter v. Texidor*, 26 P.R.R. 97; 22 Cal. Juris., Sec. 12, p. 435; *Copper Hill Mining Co. v. Spencer*, 25 Cal. 11.

However, in order that the court may make use of its discretion its jurisdiction must be properly invoked.

"We agree with the respondents that the appointment of a receiver rests in the sound discretion of the court, *but always when the jurisdiction has first been properly invoked.*" *Schluter v. Texidor*, *supra*.

In *Balasquide v. Rossy*, 18 P.R.R. 33, this court said the following:

"Generally, the application for a receiver is addressed to the sound legal discretion of the court to be exercised as an auxiliary to the attainment of the ends of justice. But the power is not an arbitrary one, and before judicial action can be justified on the ground of discretion there must be a case calling for the exercise of such discretion."

It is our contention that the motion filed by petitioner does not properly invoke the jurisdiction which in petitioner's opinion this court has and that therefore, even under the hypothesis that such

jurisdiction exists, no ground has been alleged for the exercise of the court's discretion.

It is alleged in the motion that this court entered judgment (1) ordering the dissolution of defendant corporation and (2) decreeing the loss of its franchise or corporate rights, and that

"Such process of dissolution and disposal of the property of defendant should be entrusted to a receiver."

The motion ends by saying:

"In view of the foregoing and invoking the provisions of subdivisions 4 and 5 of Section 182 of the Code of Civil Procedure, The People of Puerto Rico pray that this Court enter an order appointing a receiver in accordance with the law."

It is correct to state that in the motion The People of Puerto Rico limits itself to expressing its opinion that the dissolution and disposal of the property should be carried out by means of a judicial administrator.

In *Balasquide v. Rossy, supra*, this court said:

"Upon examining the motion for the appointment of a receiver transcribed at the beginning of this opinion it has come within our observation that the only allegations therein contained are to the effect that the defendant 'may unlawfully dispose of the properties', 'that the petitioner believes that such fraudulent disposition of his properties by the defendant may take place at any time; that he would have no available means to prevent it unless a receiver is appointed,' and that 'besides he has good reasons to believe that there exists the intention to conceal and remove said properties,' although he fails to state what those reasons are.

* * *

"The power to appoint a receiver is a delicate one especially when invoked upon interlocutory ex parte applications and should be exercised with extreme caution and only under circumstances requiring summary relief. . ."

The doctrine established in the *Balasquide* case is approved by all the authorities.

"The complaint or affidavit on which an application for a receiver is based must state facts which support one or more of the conclusions to be reached by the court before it is authorized to make an appointment; it is not enough to state the conclusions alone, except it has been held, as against collateral attack." 22 Cal. Juris., sec. 51, page 468.

"Applicant or petitioner must allege and establish facts sufficient to justify the court in appointing a receiver. The allegations and proof must be clear and positive." 19 C. J. S., page 1531.

We repeat that in the petition now under the consideration of this court nothing else is stated but the conclusion or the opinion of petitioner that a receiver should be appointed. Facts are not alleged upon which the exercise of the court's discretion could be based, nor is the necessity or convenience of the appointment of a receiver shown in the petition.

"The application for a receiver whether based on the bill or on separate affidavits, must show the necessity for the appointment, including the want or inadequacy of other remedies. . . ." 8 Fletcher, sec. 5272.

We have stated that the petition does not state facts or reasons upon which a pronouncement as to the necessity or convenience of such an appointment could be made. Let us now consider the importance of this omission. Although one of the fundamental deficiencies of the petition is that it does not inform the court for what reasons petitioner requests the appointment of a receiver, we shall assume *arguendo* that this appointment is requested so that the receiver may proceed to wind up the affairs of the corporation inasmuch as the government seems to contend that something remains to be liquidated, and so that the receiver may dispose of the properties in some manner which due to the silence

and insufficiency of the motion is only known to the petitioner. Under this theory or hypothesis the court would have to decide a question of extreme importance, to wit, that of leaving the liquidation to those who were officers and directors of the extinct corporation or depriving them of so doing by entrusting the same to a judicial administrator.

Section 28 of our Corporation Act provides as follows:

"Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, so far as such moneys and property shall suffice."

Section 30 of the same Act, as does section 183 of the Code of Civil Procedure, gives the court power in its discretion to appoint a receiver to carry out the liquidation but only upon application of creditors or stockholders. That is to say, according to our laws the liquidation of a corporation is made by the directors acting as trustees in dissolution, but the courts may exercise their discretion and entrust the liquidation to a liquidator or to a judicial administrator if so requested by some creditor or stockholder.

In 1 Tardy's Smith on Receivers, sec. 316, page 780, we find the following comment on legislation of this nature:

"The aversion of courts of equity to taking the control of property out of the hands of the real owners and placing it in the hands of an officer of the court applies to the business of winding up the affairs of a dissolved corporation as fully as to any other situation. In many states it is provided that upon dissolution, the corporation shall continue to function as such, for a limited time, for the purpose of winding up its affairs. In other the directors in office at the time of the dissolution have the statutory duty of caring for the liquidation.

"In practically every state some statutory authority, not

nominated by a court and composed of persons directly interested in the property, is furnished for this purpose. It is the general rule that courts will not displace these statutory liquidators by receivers, unless some statute imperatively so requires, or it be shown that such trustees are guilty of gross fraud or abuse of their trust in their liquidation actions. This statement is true even with reference to dissolution brought about, at the instance of the state, as a punishment for violation of a regulatory statute. The state may be interested in the matter as to whether or not a corporation shall continue in business; in fact the state may be the only party entitled to raise the question. But after dissolution has occurred, the state, generally, has no interest in what happens to the assets of the concern.

"In order to have a receiver appointed in preference to the statutory liquidators in case of the dissolution of a corporation, no matter what may be the cause of the dissolution, there must be a showing that such liquidators are violating their trust and that the property of the corporation will not be preserved without the appointment of a receiver."

If as contended by The People of Puerto Rico something remains to be liquidated and to be disposed of, which we, of course, deny, what allegations or evidence has the court before it to decide that the liquidation or the disposal of the property should be entrusted to a receiver and not to those interested in the company which was dissolved by a decree of this court? This is a conclusive example of the insufficiency of the motion, and because of that, assuming that, what of course we deny, The People of Puerto Rico may ask for the appointment of a receiver and that the court has jurisdiction, it could not exercise its judicial discretion because such jurisdiction was not invoked in due form.

In *Schluter v. Texidor*, *supra*, the court said:

"We agree with the respondents that the appointment of a receiver rests in the sound discretion of the court, but always

when the jurisdiction has first been properly invoked. Indeed, we doubt whether in this case, supposing there has been a formal compliance with the requisites of equity jurisdiction, the situation clearly calls for a receiver. We have a fairly elaborate Code of Commerce providing for the liquidation of a dissolved partnership, and there is no averment that the partners, who are also made liquidators in the articles of partnership, are incompetent or that they should be deprived of the administration. If we read the authorities right, part of the fundamental idea in the non-interference of equity is that the debtor ought to be allowed to handle his own property and manage his own debts until some very good reason to the contrary is shown."

It is alleged in the answer to the motion that "the judgment of the court has been complied with. The corporation has been dissolved, its obligations have been extinguished and it has disposed of its property by the unanimous consent of the stockholders and trustees in liquidation. The Government, however, contends that the extinct Rubert Hnos., Inc., should be dissolved by a receiver, and that the disposal of its properties should also be carried out by a receiver. There is no allegation or proof of any kind that such an appointment is necessary. And if we were mistaken and there still exists something to liquidate or to dispose of, what basis, what data, what information is furnished by the motion so that the court may decide that this should be done by a receiver or by those who, under the law, and until there is no valid order to the contrary, have full power to carry out the liquidation?"

To sustain a motion as that now before this court in which, as we have said, petitioner merely expresses its opinion that this or that should be entrusted to a receiver, would be to establish a precedent contrary to all those now existing on the subject, to revoke doctrines firmly established by this court for years, which rest on sound principles and practically to declare that the ap-

pointment, of a receiver may be obtained without any allegations or proof as to the necessity of a remedy which should always be granted with great caution and only when it is clearly justified.

II.

This Court has no Jurisdiction to Appoint a Receiver because the Quo Warranto Proceeding is Not Pending.

This case was terminated when the judgment of this court was affirmed by the Supreme Court of the United States. Inasmuch as the case is not now pending this court lacks jurisdiction to appoint a receiver. Section 182 of the Code of Civil Procedure provides:

"A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

"1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or jointly interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

"2. After judgment, to carry the judgment into effect.

"3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

"4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

"5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity."

Petitioner's contention is that the motion is based on subdivisions 4 and 5 and should be sustained in view of the provisions of said subdivisions.

This court has said that section 182 is copied almost literally from section 564 of the Code of Civil Procedure of California. *Schluter v. Texidor, supra; Nevarez Brothers v. District Court*, 36 P.R.R. 323. The construction which the California courts have given to section 564 is therefore of great value and importance in the construction of section 182 of our Code of Civil Procedure. According to this section a receiver may be appointed by the court in which an action is pending or has passed to judgment. Section 348 of the Code of Civil Procedure defines what is understood by a pending action as follows:

"An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied."

The Supreme Court of Puerto Rico in *Morales v. Cruz Velez*, 36 P.R.R. 216, referring to sections 91 and 348 of the Civil Code of Procedure has said:

"Construing the two articles together we feel bound to hold that an action is still pending until an unappealable judgment arises."

The judgment rendered by the Supreme Court of the United States affirming the judgment rendered by this court against Robert Hermanos, Inc. is an unappealable judgment. The case therefore is not pending but terminated, and if the motion is based on the provisions of section 182 authorizing the appointment of a receiver in the court where an action is pending, it is clear that this court lacks jurisdiction to make the appointment.

In *White v. White*, 130 Cal. 597, a receiver was appointed while an action for divorce was pending and after judgment was rendered the receiver was authorized to sell certain properties.

The Supreme Court of California reversed the order of the court saying:

"The judgment in the case is not in any way affected by the provision as to the receiver. The receiver had not taken possession of any property; and the object of his original appointment, and the functions originally vested in him, terminated with the entry of the judgment. Any new duties conferred upon him by the judgment were in excess of the jurisdiction of the court, whose power to appoint a receiver exists only in the cases prescribed by the Code of Civil Procedure, section 564—of which this is not one. (*French Bank Case*, 53 Cal. 495.) The power under subdivision 3 (a new provision of the code) to appoint a receiver 'after judgment to carry the judgment into effect', applies only to cases where the judgment affects specific property—as in *Guy v. Idé*, 6 Cal. 101; *Hill v. Taylor*, 22 Cal. 191, and other cases cited in the annotated Code of Civil Procedure, section 564. The provision has no application to a simple money judgment; in such case the writ of execution furnishes an amply sufficient remedy, and is the only means provided. (Code Civ. Proc., secs. 682, 684.) The judgment here can only be regarded as an ordinary money judgment.

"The judgment rendered was a final adjudication of the rights of the parties, and was conclusive not only as to the relief granted but as to the relief denied or withheld. (Code Civ. Proc., sec. 1908.) Upon its entry the jurisdiction of the court over the subject matter of the suit and the parties was exhausted, unless preserved in the mode authorized by statute. By section 1049 of the Code of Civil Procedure, the cause had then ceased to be pending in the court, and the court was without jurisdiction to render any further judgment therein. (*Bracket v. Banegas*, 99 Cal. 627; *Carpentier v. Hart*, 5 Cal. 406; *Bell v. Thompson*, 19 Cal. 706; 2 notes to California Reports, 130; Freeman on Judgments, secs. 141, 142; 1 Black on Judgments, sec. 306.) After final judgment

any further judgment, or order materially varying the judgment, is a mere nullity. (*Barry v. Superior Court*, 91 Cal. 486; *In re Barry*, 94 Cal. 562; *Hubbard v. Moss*, 65 Mo. 647; *Ross v. Ross*, 83 Mo. 100.)

"Doubtless the court may in its judgment provide for further action in order to furnish complete relief. But in such cases the judgment, as to such matters, is not final. Here there was no provision of the kind, and the judgment was final as to all matters involved. The order complained of was not designed to carry into effect the judgment rendered, but is in effect a new adjudication in the nature of a decree of foreclosure depriving the plaintiff of property held by him under constitutional guaranties, and of which he cannot be deprived without due process of law."

In *Havemeyer v. Superior Court*, 84 Cal. 327, the Supreme Court of California said as follows:

"The conclusion which inevitably follows from these views is, that, in an action under sections 802 *et seq.* of the Code of Civil Procedure, the rendition of the judgment authorized by section 809 ends the proceedings so far as the superior court is concerned, and that no receiver of the corporate property can be appointed unless a new and distinct proceeding is commenced by a creditor or stockholder of the corporation, (Code Civ. Proc., sec. 565.)"

We have noted that the first paragraph of section 182 of the Code of Civil Procedure refers to the appointment of a receiver in a pending action or in one which has passed to judgment. We have shown that this is not a case in which a receiver may be appointed under the theory that an action is pending. Let us now consider if a receiver can be appointed on the ground that the present action has passed to judgment.

Only in two cases of those provided for in section 182 of the Code of Civil Procedure can a receiver be appointed after judgment, to wit, in the two cases expressly mentioned in the statute

and these are the ones comprised in subdivisions 2 and 3 of said article. Section 564 of the Code of Civil Procedure of California, which this court has stated is almost a literal copy of section 182 of the Code of Civil Procedure, provides as follows:

"Section 564.—Appointment of Receivers.—A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

"1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

"2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the conditions of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

"3. After judgment, to carry the judgment into effect;

"4. After judgment, to dispose of an appeal, or in proceedings in aid or to preserve it during the pendency of an appeal, or in proceedings in aid of execution when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

"5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

"6. In an action of unlawful detainer, in those cases in which the superior court has exclusive original jurisdiction;

"7. In all other cases where receivers have heretofore been appointed by the usages of courts in equity."

It is well settled in California that in accordance with the provisions of section 564 of the Code of Civil Procedure of said State there are only two provisions which authorize the appointment of a receiver after judgment, to wit (those contained in subdivisions 3 and 4 of said section which are identical to subdivisions 2 and 3 of section 182 of our Code:

"There are but two statutory provisions authorizing the appointment of a receiver after judgment. Subdivisions 3 and 4 of section 564 of the Code of Civil Procedure." (22 Cal. Juris., sec. 33, page 451.)

And it is to these two subdivisions, and to them only, that paragraph 1 of section 182 refers when it provides that a receiver may be appointed in an action which has passed to judgment.

The first paragraph of section 564 of the Code of Civil Procedure of California refers to an action which is pending, but not to an action which has passed to judgment, whereas the first paragraph of section 182 of our code mentions both cases. This, it is submitted, makes all the more clear our contention that only subdivisions 2 and 3, which expressly so provide, authorize the appointment of a receiver after judgment. The legislature of Puerto Rico included the words "or has passed to judgment" to harmonize the first paragraph of section 182 with the subsequent provisions of said section. In other words, it is evident that the words of the first paragraph with regard to pending actions refer to subdivisions 1, 4 and 5, and the words "or has passed to judgment" refer to subdivisions 2 and 3 which expressly provide for the appointment of a receiver after judgment.

Leaving aside the fact that the petitioner's motion is based expressly on subdivisions 4 and 5, it is obvious that subdivisions 2 and 3 would be and are inapplicable. The doctrine in California is that subdivision 3 of section 564 of the Code of Civil Procedure of said State which authorizes the appointment of a receiver "after judgment, to carry the judgment into effect" applies only when the judgment affects specific property.

"A receiver may be appointed after judgment, to carry the judgment into effect, unless the execution thereof has been stayed by proper bond. This code provision applies only where the judgment affects specific property." 22 Cal. Juris. sec. 34; page 452; *White v. White*, 130 Cal. 528.

With regard to subdivision 3 it is obvious that the same can not be invoked for the purpose of the appointment of a receiver in this case inasmuch as there is no property to dispose of in accordance with the judgment in view of the fact that the judgment makes no provision whatever with regard to defendant's properties. Nor is there any need of preserving property during the pendency of an appeal. Nor is this a case involving proceedings in aid of execution when an execution has been returned unsatisfied.

III.

This Court lacks Jurisdiction to Appoint a Receiver in a Quo Warranto Proceeding; it can Not Appoint a Receiver upon Petition of The People of Puerto Rico. Once a Corporation has been Dissolved by Decree of a Court in a Quo Warranto Proceeding a New Proceeding must be Instituted by a Creditor or Stockholder in Order that the Court may Acquire Jurisdiction to Appoint a Receiver.

Sections 27 and 28 of the act entitled "An Act to establish a law of private corporations" establishes the normal procedure for the dissolution of a corporation regardless of the cause of its dissolution; said sections authorize the directors of the corporation as trustees to do all that is necessary to effect its liquidation and they are charged with the payment of all the obligations of the corporation and the division of the remaining assets among the stockholders.

The appointment of a receiver to deprive the directors of the corporation of the possession of the properties of the corporation deprives said directors of their right and authority to carry out the dissolution and distribution of the assets and constitutes a violent

alteration of the normal and orderly process of dissolution. In any case, it would mean considerable expense which would have to be deducted from the available assets to be divided among the stockholders.

In the present case, and under the hypothesis that there is something to liquidate, it would mean the imposing of a much more serious penalty than those imposed by the judgment of this court. Not only would it produce all the consequences graphically pointed out by the Supreme Court of California in *Havemeyer v. San Francisco Superior Court*, 84 Cal. 327, but also consequences of perhaps equal gravity for the landowners who were "colonos" of defendant corporation and those persons and entities with whom said corporation had contracts of undoubted validity.

Such penal consequences do not arise from the corporation act, nor from the penal code nor from any other substantive statute, but rather, according to petitioner's theory, from adjective law, a law of civil procedure, section 182, which was approved some seven years before the approval of the private corporation act.

It would seem very strange that said penalties, were it the intention of the Legislature to impose them by virtue of the provisions of section 182 of the Code of Civil Procedure, were to be found in a purely procedural statute, and the inclusion of penalties in a statute of this nature would violate the provisions of the Organic Act of Puerto Rico because the title of the Code of Civil Procedure gives no notice that in said code penalties would be provided for, and such provisions would not be germane to the nature of the legislation announced by said title.

It is true that in Act No. 47, approved on August 7, 1935, provision was made, among other penalties, for the confiscation of the property of a corporation found guilty of possessing or controlling real property in excess of the limit fixed by the Joint Resolution of Congress, or its sale at public auction—and the sale of the property at public auction is exactly what the receiver entrusted with the liquidation would proceed to do—but in accord-

ance with section 6 of the Quo Warranto Law, as amended by section 2 of said Act No. 47, said penalty must be provided for in the judgment which is rendered and the price of the sale must be fixed in said judgment. In the judgment rendered in this case the court did not impose such a penalty nor did it order a sale at public auction.

But it is not true that by section 182 of the Code of Civil Procedure the Legislature of Puerto Rico intended to impose penalties or authorize The People of Puerto to petition for the appointment of a receiver in a quo warranto proceeding. And incidentally we may add that section 182 had the same meaning before as it had after the approval of Act. No. 47 of 1935.

The Supreme Court of California has carefully examined, analyzed and construed provisions similar to those contained in section 182 of our Code of Civil Procedure in an opinion written by one of the most distinguished jurists of America, Justice Beatty, the Chief Justice of said Court. The case referred to is *Havemeyer v. San Francisco Superior Court*, 84 Cal. 327. The statutory provisions there studied and construed are: Section 564 of the Code of Civil Procedure of California, identical to section 182 of the Code of Civil Procedure of Puerto Rico; section 565 of the Code of Civil Procedure of California, the same as section 183 of the Code of Civil Procedure of Puerto Rico, and section 400 of the Civil Code of California, substantially the same as section 28 of the Private Corporations Act of Puerto Rico.

We copy extensively from said opinion not only because it discusses and analyzes statutory provisions the same as those in force in Puerto Rico, but also because this case contains the best study and discussion on the subject which we have been able to find. With regard to this case, the distinguished commentator, Pomeroy, in his "Pomeroy's Equity Jurisprudence", 4th Edition, pages 3645, 3646, says:

"The opinion of Beatty, C. J. in *Havemeyer v. Superior Court*, 84 Cal. 327, 342-389, 18 Am. St. Rep. 192, 10 L.R.A.

627, 24 Pac. 121, is by far the longest and most elaborate to be found in any report on the subject of the appointment of receivers of corporations."

In section 1548, pages 3642 and 3643, of the same treatise under the title "Receivers Authorized by Statutes", the author copies and incorporates in the text of said opinion the following:

"The remarks of a very able judge in description of this legislation may be of interest: 'In the absence of any statute regulating the matter, a court of equity would have the undoubted right, in a proper proceeding instituted by a creditor or stockholder, to appoint a receiver to administer the property (of a corporation that has ceased to exist). But in many of the states, statutes have been passed expressly providing for the appointment of receivers, or trustees exercising the same functions, though sometimes called by other names. In all cases it is made their duty to collect the assets, pay the debts and distribute the surplus pro rata to the stockholders. As this is precisely what a court of equity would have done in the absence of a statute, it is to be inferred that the motive of such legislation has been to accomplish some other object,—some object, that is to say, for which express legislation was necessary. This inference is fully justified and amply borne out by reference to the different statutes. They seem to have been enacted with the object, in some instances, of abrogating the old law of forfeiture, and reversion; in others, of committing the administration to other courts than courts of equity; in others to provide general and uniform rules of procedure, as to giving notice to creditors, etc., to take the place of rules of court and specific orders to be made by the chancellor in each particular case; in others, to keep the matter out of the courts altogether, as by allowing the dissolved corporation to continue its existence for a term for purposes of liquidation, but for no other purpose. The whole mass of this legislation seems to be pervaded

by the one idea of simplifying, expediting, and cheapening the means of accomplishing the one object of transferring to the stockholders of a defunct corporation their full share of its surplus assets. There is, from beginning to end, no suggestion of added penalties or punishment after death.

The Supreme Court of California referring in the *Havemeyer* case to the order appealed from appointing a receiver and to the opinion of the court which had entered said order, says:

"It will be seen, by reference, to the opinion of the superior court, above quoted, that the provisions of section 564 of the Code of Civil Procedure, to the effect that a receiver may be appointed when a corporation has forfeited its charter, is construed to mean that in such case a receiver must be appointed, and this because the public has an interest that the power should be exercised. To our minds it is perfectly clear that the true construction of this clause of section 564 is found in the very next section of the code, wherein it is specifically enacted that upon the dissolution of any corporation, the superior court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers, etc. Here is an express enumeration of the parties, and the only parties (*expressio unius est exclusio alterius*), whose interest demands that *may* should be read *must*; and considering this language in connection with section 400 of the Civil Code, which, as we have seen, provides that the directors in office at the date of its dissolution shall settle the affairs of a corporation, unless some other persons are appointed, we should never have thought of looking further for a definition of the circumstances under which a receiver could be appointed. In terms, both sections apply as well to cases of involuntary as to cases of voluntary dissolution, and they do in fact provide a most salutary rule for

the protection of all persons interested in the property. But it is held that they must be construed out of their obvious sense, and limited in their application to cases of voluntary dissolution, because, and only because, in cases of forfeiture for corporate misconduct, the stockholders cannot be adequately punished or restrained without the intervention of a receiver, and, consequently, that the interest of the public, in the imposition of such punishment and restraint, requires the conversion of 'may' into 'must' thus making the appointment of a receiver obligatory in all cases of forfeiture.

This proposition, which is, in effect, stated in the opinion above quoted, is much more plainly and directly put in the argument made by the respondent here. He asks if it is possible that this controversy between the state and a concern with millions of capital is limited to the imposition of a fine of five thousand dollars, and the cancellation of a charter the duplicate of which can be obtained while we are talking here, and he answers his own question as follows:

'I understand the great interest of the state is to break down the monopoly. To do that, it seizes the means and utensils,—the business with which the monopoly has been proceeding. It scatters it. It divides it up. A receiver is appointed for that purpose. That is part of the penalty. That is a part of the penalty provided by law because they have forfeited their corporate rights,—no other reason.'

Translated into terms specifically applicable to the case before us, the meaning of this is, that if a corporation organized for the purpose of refining sugar enters into a combination with other corporations, through the medium of what is called a trust, for the purpose of limiting the production and keeping up the price of refined sugar, the courts will not only forfeit its charter and impose the utmost fine which the law prescribes for such offenses, but they must go further, and by the hands of a receiver seize into their possession all the property of the defunct corporation, and especially its

sugar-refining plant, not for the purpose of preserving and protecting it, and as speedily and economically as possible distributing it to those who are equitable entitled, viz., creditors and stockholders, but for the quite opposite purpose of shutting it up and condemning it to rust and idleness until such time as it can be unfitted completely for the purpose to which it is best adapted by dividing it up and scattering it. We confess that this is to us a novel doctrine, and one which does not, upon any ground, commend itself to our judgment.

"It may not be the rule in this state to construe penal legislation strictly, but even here, when a court is asked to impose a penalty for infraction of a law, the first inquiry is, What penalty does the law prescribe? The answer to this question is sought, not in labored construction of other statutes, but in the express term of the act defining the offense.

"Now, what is the case here? In section 803 of the Code of Civil Procedure, the legislature has enjoined upon the attorney general the duty of bringing actions for the forfeiture of corporate franchises whenever he has reason to believe that they are unlawfully held or exercised. This was his sole authority for bringing his quo warranto against the American Sugar Refinery Company, and it is upon this chapter of the code that the judgment of forfeiture depends. Section 809, in the same chapter, defines the character of the judgment that must be rendered when the defendant is found guilty, viz., that the defendant be excluded from the franchise it has abused, and the court may also, in its discretion, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, must be paid into the treasury of the state. This is absolutely all the punishment that the legislature has in terms prescribed; and if any other was intended, especially if such other punishment was designed to be severe beyond comparison with that expressly defined, it is passing strange that the courts should have been left to

work it out by a doubtful construction of other parts of the codes.

But, to our minds, the gravest objection to the doctrine lies in the consequences which it involves. Obviously there is no measure or limit to the punishment which may be inflicted in the manner indicated, except in the discretion of the court and the moderation of its receiver. The duty of the receiver is not conservation, but destruction. In whatever business the offending corporation may have been engaged, his first step must be to shut up its works; however vast the capital invested, it must be condemned to lie idle and unproductive until it can be divided up and scattered. It must not be sold as a whole, complete and adapted to the work for which it was designed, and for which alone it possesses any considerable value. To do so would defeat the whole object of the receivership; for not only would the offending stockholders get off without adequate punishment, but there would be nothing to prevent them from buying in their own property and again putting it into the combination. It must, therefore, be divided up and scattered, and its value in great measure destroyed. The stockholders, when they finally realize upon their property, must be content to receive, not the proceeds of a well-appointed manufactory in complete running order, but the price of a lot of old iron and second-hand machinery, sold in lots according to the discretion of a receiver, acting with a view, not to their interest as stockholders, but solely with a view to the interest of the public in punishing them.

We cannot assent to a doctrine involving such consequences. If it is really true that our laws, as they are written, provide no adequate punishment for corporate transgressions, let the legislature take the matter in hand. It is no part of the function of a court to supply the want of penal legislation. Its judgments in such case, beside being wholly unauthorized, would always operate as bills of attainder or

ex post facto laws, both of which are not only abhorrent to our ideas of justice, but are expressly forbidden by our charters of government." Pages 374, 379.

"The conclusion which inevitably follows from these views is, that in an action under sections 802 et seq. of the Code of Civil Procedure, the rendition of the judgment authorized by section 809 ends the proceedings so far as the superior court is concerned, and that no receiver of the corporate property can be appointed unless a new and distinct proceeding is commenced by a creditor or stockholder of the corporation. (Code Civ. Proc., sec. 565.)

"Such new and distinct proceeding upon the part of the beneficiaries, or some of them, is the essential condition of any jurisdiction in the court to take the property out of the control of the trustees designated by law. (Civ. Code, sec. 400.) An order appointing a receiver without such application is, therefore, void, not only as to strangers to the quo warranto, but is even void as to the corporation and its stockholders and vendees." (Page 380.)

In *State Investment and Insurance Co. v. San Francisco*, 101 Cal. 135, the proceeding was instituted by an information filed by the Attorney General in the Superior Court for the People of the State of California against the above-named corporation under the provisions of section 601 of the Political Code of California. In this proceeding petitioner prayed for judgment decreeing the dissolution of the corporation, its liquidation and the distribution of its assets.

The court rendered judgment in accordance with the prayer of the information and the said judgment also appointed a receiver of all the property of defendant corporation providing that said receiver should take possession of said property, liquidate the corporation, and distribute its property and effects.

Defendant corporation appealed to the Supreme Court of California and also applied for a writ of prohibition.

The Supreme Court held that the appointment of a receiver was invalid, stating that the jurisdiction of the Superior Court to decree the dissolution of a corporation existed only by virtue of statutory authority and that it did not possess such authority under its inherent general equity jurisdiction, and that since its jurisdiction derives from the statute, it is limited by the same with regard to the conditions under which such jurisdiction may be invoked as also with regard to the judgment that it may render. It is also held that said section of the Political Code did not authorize the appointment of a receiver. The court held finally that the appointment of the receiver was not authorized by the provisions of the Code of Civil Procedure (sections 564 and 565). The court said:

"The only parties to the present action are the people of the state and the delinquent corporation. When the object for which the action is authorized—the revocation by the state of the franchise which it conferred—has been accomplished, there would naturally be no further action for the court to perform. The state has no interest in either the assets of the corporation or its debts, and when it has secured the dissolution of the corporation its functions in the action have ceased. (See *People v. Buffalo Stone Co.*, 131 N.Y. 144.) The statute does not authorize either the attorney general or the insurance commissioner to exercise any further direction or control in the affairs of the dissolved corporation, or in the distribution of its assets; nor has the state or any of its officers any interest in having the creditors receive from the assets of the corporation the amounts in which it may be indebted to them; and it is no concern of the state how or when the assets of the corporation shall be divided between the stockholders. Notwithstanding the decree of dissolution, the property still belongs to the stockholders, and the right to wind up the affairs of the corporation and to distribute its effects is given by the statute to the directors, and they can be deprived of this control over the property

of the corporation only at the instigation of a creditor or stockholder."

Other decisions of the Supreme Court of California, among them, the *Peoples Home Sav. Bank v. Superior Court*, 103 Cal. 27, state the same rule and construe in like manner the aforementioned sections of the Code of Civil Procedure.

In *Murray v. American Surety Co. of New York*, 70 Fed. 341, the Circuit Court of Appeals for the 9th Circuit held that the appointment of a receiver in a proceeding instituted under the California Bank Commissioners Act was invalid, and that the court had no jurisdiction to make such an appointment. The court in holding that sections 564 and 565 of the Code of Civil Procedure of California did not authorize the appointment stated the rule applicable to all statutory proceedings in the following words:

"In whatever light this question may be viewed, we are brought directly face to face with the unquestioned rule of law that in all special statutory proceedings the measure of the court's power is the statute itself."

When the statute does not so provide, a court has no power to appoint a receiver in quo warranto proceedings upon petition of the people or the state. *Yore v. San Francisco Superior Court*, 108 Cal. 431; *Commonwealth v. Order of Vesta*, 156 Pa. St. 531; 27 Atl. 14; *In re Fraternal Guardians Assigned Estate*, 159 Pa. 603; *State v. West Wisconsin R. Co.*, 34 Wis. 197; *Jackson Loan & Trust Co. v. State*, 101 Miss. 440, 56 So. 293; *Weatherby v. Capital City Water Co.*, 115 Ala. 156; 22 So. 140.

IV.

Apart from the Reasons Already Stated the Appointment of a Receiver Does Not Lie because the Judgment has been Complied with, and Appointment of such a Receiver Would Have no Purpose or Objective Whatever.

Defendant corporation was dissolved by virtue of the judgment rendered by this court. In other words, in order to dissolve

said corporation there has never been any need of the appointment of a receiver. Moreover, on March 28, 1940, the stockholders of Rubert Hermanos, Inc., delivered to the Executive Secretary of Puerto Rico a document which in part reads as follows:

"The undersigned being all the stockholders of the corporation Rubert Hermanos, Inc., desiring to comply with the judgment of the Supreme Court of Puerto Rico in Case No. 2 entitled *The People of Puerto Rico v. Rubert Hermanos, Inc.*, quo warranto, rendered on July 30, 1938, a copy of which is attached hereto, hereby request the Executive Secretary of Puerto Rico to take notice of the dissolution of said corporation."

The fine, costs, and attorney's fees have been paid. The corporation was liquidated by conveying all its properties to a partnership organized and composed of those who were its only stockholders and in effect the owners of said property. It was considered that this was the only feasible, legal and economically sound method of effecting the dissolution and liquidation of the corporation so as to avoid serious and unnecessary injuries to the stockholders. The People of Puerto Rico had notice of the conveyance of all these properties before they requested that a date be set for the hearing of its motion for the appointment of a receiver.

It is obvious therefore that the appointment of a receiver can serve no purpose whatever to effect the dissolution, liquidation or disposal of the properties of defendant corporation.

"It is ground for refusal that no good can be accomplished by the appointment of a receiver." 8 Fletcher, page 8884, sec. 5261.

"A receiver will not be appointed where not necessary."
8 Fletcher, page 8883, sec. 5260; *City of Cape May v. Cape May, D.B. & S.P.R. Co. et al.*, 59 N.J.E. 59; 44 Atl. 973; *Barton v. Enterprise Loan & Bldg. Ass'n. Of Wabash*, 114 Ind. 226; 16 N.E. 486.

"Certainly The People of Puerto Rico could not seriously contend that this court should decree the appointment of a receiver to take over property which no longer belongs to the extinct corporation and which has been acquired by a third party who is not before the court, even though said party consists of a partnership which was organized and is composed of those who were the stockholders of Rubert Hermanos, Inc., and particularly when the motion requesting the appointment does not state the reasons why the appointment is requested and merely states petitioner's opinion to the effect that the appointment should be made for the purpose of disposing of the extinct corporation's property. *Havemeyer v. Superior Court*, 84 Cal. 327; *People v. O'Brien*, 111 N.Y. 163, 2 L.R.A. 255, 268; *Weatherby v. Capital City Water Co.*, 115 Ala. 156, 22 So. 140."

In view of the foregoing reasons it is respectfully prayed that the motion for the appointment of a receiver be overruled.

San Juan, Puerto Rico, July 5, 1940.

Respectfully submitted,

JAIME SIFRE, JR.,

HENRI BROWN,

Attorneys for the Defendant.

Served with copy this fifth day of July, 1940.

MIGUEL GUERRA-MONDRAGON,

Attorney General of Puerto Rico.

[Title omitted.]

REPLY OF THE PEOPLE OF PUERTO RICO TO
DEFENDANT'S BRIEF

REGARDING THE APPOINTMENT OF RECEIVER

[Filed July 16, 1940.]

The points in regard to which The People of Puerto Rico do not agree with defendant, Rubert Hermanos, Inc., because of their importance are the following:

- (a) With reference to the statutes applicable to this incident.
- (b) With reference to the value of the doctrines propounded in the case of *Havemeyer v. Superior Court*, 84 Cal. 327; and
- (c) With reference to the sufficiency of the motion by The People of Puerto Rico praying for a receivership.

The other questions argued by defendant are of a secondary nature and are practically involved in the above-mentioned points.

(a)

With reference to the applicable statutes.

The fundamental discrepancies between The People of Puerto Rico and the defendant are with reference to these first points. The defendant does not distinguish between the dissolution of a corporation "in any form agreed upon" (Article 28 of our Corporation Law, page 8 of complainant's brief) and the forfeiture of a franchise of a corporation. Dissolutions are governed by the provisions contained in Section VI, "Dissolution", Articles 26 and 33 of the Private Corporations Act (Commercial Code, ed. 1932, p. 352). On the other hand the Law of Private Corporations does not contain any provision applicable to the immediate cessation of the corporate life as a consequence of the forfeiture of a franchise. Sub-paragraphs 4 and 5 of Article 182 of the Code of Civil Procedure are the only laws in force which relate to the corporate death.

The existence of an essential and profound distinction between the dissolution and corporate death appears immediately upon a reading of the wording of our statutes. Article 28 of the Corporation Law cited by defendant, when it says "Upon the dissolution of a corporation in any form agreed upon, the directors shall be the trustees . . .", excluding all notion or idea of corporate death decreed in a quo warranto proceeding and is, for that reason, inapplicable. To "agree" in accordance with the dictionary of the Spanish language has the same meaning as "determine or decide in accord or by a majority vote". The forfeiture of a franchise

arises from the fault or delinquency of the corporation and it may not be agreed or determined in any form by the directors or by the stockholders. And finally, sub-paragraph 4 of Article 182 of the Code of Civil Procedure recognizes the existing difference between the dissolution and the forfeiture of a corporate franchise, inasmuch as the text treats them as these things or situations.

"In case when a corporation has been dissolved . . . or has forfeited its corporate right."

This distinction between dissolutions and corporate death which today appears clean and clear in our laws has very remote precedence. In the State of New York, where the doctrines and principles which now occupy us were promulgated for the first time as positive right, such distinction was observed from ancient times. So, in 1887 Judge Earl, in *Herring v. New York, L. E. & W. R. Co.*, 12 N.E. 763, 781, bequeathes to us the following illustrative data of the procedure which was followed in that jurisdiction to decree a forced liquidation of a corporate entity:

"The other was a proceeding instituted by writ of quo warranto by the attorney general after leave obtained of the court, which was a proceeding at law in which the corporation was entitled to a jury trial; and in that proceeding judgment could be rendered dissolving the corporation; but the supreme court had no right to appoint a receiver. But, after final judgment annulling and dissolving the corporation, the attorney general was required to apply to the court of chancery for the appointment of a final receiver, and his powers and duties were regulated by the provisions contained in Article 3 above referred to in reference to the voluntary dissolution of corporations. These two systems of procedure against corporations went along side by side—one in chancery; the other at law."

Resuming (1) a quo warranto proceeding before a court of law, with a right to a trial by jury; (2) appointment of a liquidator by

a court of equity with the same powers as those provided by statutes for cases of voluntary dissolution. From all this two valuable consequences are derived, to wit: (a) that it was the custom of courts of equity to appoint liquidators for defunct corporations; and (b) that it was not permitted to the directors of a defunct entity to participate in a liquidation as was the case in all cases of voluntary dissolution.

At all times the American courts have laid stress on these fundamental differences, a matter which seems strange considering the clearness of the statutes and, therefore, the little or entire lack of necessity of doing so.

In 1899 Judge Flay of the Court of Appeals of Texas (*San Antonio Gas Co. v. State*, 54 S.W. 289, 294), punctualized the various situations to which the law makes reference:

"That the statute draws a distinction between a dissolution and the forfeiture of a charter is shown by the language of section 3, art. 1465, Id., where provision is made for a receiver in case of dissolution, insolvency, or forfeiture. When a charter is forfeited, the life of a corporation ceases, and no president and board of directors can survive it, and, unless specially authorized by statute, could not by virtue of their offices, take control of the property of the corporation. If article 682 could apply to cases in which there has been a forfeiture of a charter by the state, it can only apply when no receiver has been appointed by some court of competent authority. If it be necessary to justify the power given by statute, it may be well to remember that appellant in this case is a quasi public corporation, and for the protection of the public interest it was necessary that a receiver should be appointed."

In 1908 the presiding Justice of the Supreme Court of the State of Washington, Mr. Hadley—*Conlan v. Oudin*, 94 P. 1074—again distinguishes between a voluntary dissolution and the forfeiture of corporate franchises:

"Appellants contend that, under the terms of section 4274, Ballinger's Ann. Codes & St. (Pierce's Code, sec. 7075), the persons who are trustees of a corporation at the time of its dissolution become the trustees of the stockholders and creditors, with full power and authority to settle up the affairs of the corporation and distribute the proceeds of the state among the stockholders. We think, it was the evident intention of the Legislature to apply the provisions of section 4272 to cases of voluntary dissolution, the procedure for which is outlined in section 4275 (section 7076). Such a dissolution is effected by a vote of two-thirds of all the stockholders at a meeting called for that purpose, followed by certain prescribed procedure in court. In considering the matter from the legislative standpoint it was doubtless believed that, in cases of voluntary dissolution, there is ordinarily sufficient unity of purpose to make the former trustees proper and desirable administrators of the corporate estate. The dissolution in the case at bar was not a voluntary one effected under the above statute."

And nearer to our day, in 1924, the Judge of the Supreme Court, of Ohio, Mr. Allen in *State v. Municipal Saving & Loan Co.*, 144 N.E. 736, 738, repeats the said distinction:

"The instant appointment is not a case of consent of the parties . . .

"Nor does this case arise under section 11944, General Code; which in part reads:

"A director, trustee, or other officer of the corporation, or any of its stockholders, may be appointed a receiver."

"This section is a part of the chapter entitled, 'Dissolution of Corporations' and refers only to cases of voluntary dissolution of a corporation. The instant case, however, is not one of voluntary dissolution. Hence this is not an action in which under the statutes it is permissible to appoint a

director, trustee, or other officer of the corporation, or a stockholder as receiver."

The cases in which the court has taken for granted the existing distinction between voluntary dissolution and corporate death and has acted upon them without any statement are naturally very numerous.

Having pointed out and discussed even to the point of redundancy this difference, the only thing left for us is to repeat that the jurisdiction of the court to take action on this difference arises in an affirmative manner from the clear terms of the existing law:

"In case when a corporation . . . has forfeited its corporate rights."

Under these circumstances, the corporate franchise of the defendant's entity having been forfeited, we do not see how the authority of this court to grant the petition of the people can be seriously put in doubt.

"The state expressly authorized the appointment of a receiver in the event that judgment was rendered against the corporation. The judgment in case of a forfeiture is that the franchise be seized into the hands of the state, and that the corporation be dissolved. 2 Kent. Comm.; *President, etc., of Bank of Vincennes v. States*, 1 Blackf, 267; *Ryan v. Vandalingham*, 7 Ind. 416. The appointment of a receiver to take possession of the property of the company was necessary, and, in the exercise of its general powers, we think the court was authorized to make such appointments. It was asked for in the information, and no harm could result from the appointment as a part of the proceedings in the cause. Had it not been made until after judgment, the court would doubtless have had the right to make the appointment on the motion of the prosecuting attorney, and without further notice. A correct result having been reached, we do not think

the action of the court should be disturbed, or that any reason exists for a modification of its judgment." Judgment affirmed." *Eel River Co., etc.*, 57 N.E. 388, 398.

(b)

With reference to the value of the doctrines propounded in the case of *Havemeyer v. Superior Court*, 84 Cal. 327.

The jurisprudence of the State of California, notwithstanding the repeated statements of the defendant (see pages 4 and 14 of its brief); in this case has no persuasive value whatsoever. It is observed that Article 182 of our Code of Civil Procedure "follows substantially, if not literally, the California statute", (*Schiuter v. Texidor*, 26 P.R.R. 97, 114); but the same thing may also be said substituting California for Texas, Washington, Mississippi, Kansas or by other States. The fact is that the original statutes with reference to receivership were promulgated in the year 1825 in the State of New York and that said statutes were subsequently copied in other jurisdictions. In 1829 New Jersey copied the Illinois, Ohio, Delaware, etc., followed thereafter.

In the work of *Clark On Receiver*, vol. 2, pages 1062 and 1063, the history of these legal provisions are explained:

"The Indiana, Idaho and other Civil Codes have followed the old New York Statute on the subject of receivers, but have changed the old New York sub-section 4, of section 244, to suit the exigencies of their states, the substance of their statutes being as follows:

"5. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights.

"The State of California adopted a Code of Civil Procedure patterned after the New York Code. Subsection 4 of the New York Code became the substance of subsection 5 of section 564 of the California Civil Code of Procedure

Subsection 5 of California Civil Code of Procedure was and is as follows:

"5. In the cases where a corporation has been dissolved or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights."

The literal analogy of the statutory provisions in force in the majority, if not in all the States of the Union, is explained by the ancient sanction of the principles and doctrines in which they were incarnated.

We, therefore, do not find any reason why preference should be given to the California decision. Our Article, for example, could have been very well copied from the State of Idaho inasmuch as in accordance with the opinion of the deceased Justice MacLeary, the local procedure originated in that place.

"Our present code of Civil Procedure . . . was adopted from the Code of Idaho, which is a State in which the author of said Code had previously resided." *MacCormick et al. v. Molinary et al.*, 16 P.R.R. 389.

Under these circumstances, the persuasive force of the different opinions should depend exclusively upon the justice and the good sense of their reasonings and not the place on which the court sits:

"Perhaps as the statute is the same we should give attention to the interpretation given by California in preference to those of other States. But we have come to our own conclusion based upon the fact that the letter of the law is clear." *Behn v. Municipal Court*, 47 P.R.R.—

From the California jurisprudence defendant's favorite case is that of *Havemeyer*. "It is the best studied and analyzed." It is stated on page 25 of its brief "which we find on this subject". And to give weight to its statements it cites from the distinguished author Pomeroy. *Pomeroy's Equity Jurisprudence*, 4th Ed., pages 3645, 3848, the following:

"The opinion of Beatty, C. J., in *Havemeyer v. Superior*

Court, 84 Cal. 327, 342-389, 18 Am. St. Rep. 192, 10 L.R.A. 627, 24 P. 121, is by far the longest and most elaborate to be found in any report of the subject of the appointment of receivers of corporations.

Notwithstanding our search with reference to the statements made by this author, we do not see in any place that Pomeroy approves the doctrines of Judge Beatty. He calls attention to the length of the opinion and to how elaborate it is. He does not say that the arguments are logical nor that the reasoning is solid.

The number of reasons has never been the criterion of the value of a thesis. Nor the more or less elaborateness of them. Renato Descartes, in his "Essay on Method", says that when to sustain an assertion numerous reasons are given is because none of them is entirely sound. And Justice Frankfurter, in his opinion in this case talks of the dangerous powers of the sophistic fallacies. "The power", the Justice says, "of subtle argument to give an appearance of difficulty to what is relatively simple."

To begin, the opinion in the *Havemeyer* case was given on June of 1890, in other words, half a century ago. It comprises 57 printed pages, without counting the syllabus and the briefs of the parties.

In it, Judge Beatty abandons the established doctrine and practically repeals, in California, the provisions of the statute borrowed from the State of New York.

Years later—1889, 1892, 1899—the Justices of the Supreme Court of Texas repudiated the decision in the *Havemeyer* case and reinstated the primitive doctrines.

"The courts of Texas have several times been called upon to interpret a provision of their statutes relating to the appointment of receivers of corporations similar to that of the California Code, and have reached a conclusion directly opposite to that reached in *Havemeyer v. Superior Court*, 84 Cal. 327, 18 Am. St. Rep. 192, 10 L.R.A. 627, 24 Pac. 121.

In Texas, therefore, under the familiar code provision, that receivers may be appointed in cases where a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights, a receiver may be appointed on the application of the state after judgment in quo warranto proceedings against the corporation; *East Line & Red. River R. Co. v. State*, 75 Tex. 434, 12 S.W. 690; *Texas Trunk R. Co. v. State*, 83 Tex. 1, 18 S.W. 199; *San Antonio Gas Co. v. State*, 22 Tex. Civ. App. 118, 54 S.W. 289." 4 Pomeroy's Equity Jurisprudence (4th ed.) pages 3657, 3658.

After the action of the Texas Justices the majority of the American courts have consistently ignored the theory of the *Havemeyer* case notwithstanding its presence and its notoriety in the treatises and juridical encyclopedias.

Such, is what we may call the history of complainant's favorite case.

The slight value of this decision clearly appears from a mere reading thereof. Judge Beatty repeatedly holds in different ways that a receivership is an outrage perpetrated on the stockholders and directors of the defunct entity. This statement involves several inaccuracies.

Receiverships, as provided for in the Codes, were a present offered by Equity to the corporate interests. Under the English Common Law the corporate death was not an empty phrase, but an absolute reality.

"Its real estate reverted to the grantor and his heirs: Angell & Ames on Corp. 779; Field on Corporations, secs. 491, 492. The personal estate vested, in England, in the king and in America, in the people. The debts due to and from the corporation were totally extinguished: A. & A. on Corp., sec. 799; Field on Corp., secs. 491, 492." 12 Am. Dec. 239, Annotation.

The harsh but just rules of the past were mitigated with the

passing of time. Equity found in receiverships, as we understand them today, the least imperfect equation between the interest of society and those of individuals. See *Bacon et al. v. Robertson et al.*, (1855) 59 U.S. 480.

But, apart from this historical reflection, the truth is that receivership was never considered, neither before nor after the *Havemeyer* case, as a punishment or penalty imposed on directors and stockholders or upon third persons.

In *East Line & Red. River R. Co. v. States* (1889) 12 S.W. 690, 696, the Supreme Court of Texas refutes Judge Beatty's conclusions as follows:

- "Receiver may be appointed in cases where a corporation has been dissolved, or is insolvent, or on imminent danger of insolvency, or has forfeited its corporate rights. Acts 1887, p. 120, sec. 1, subd. 3. And his powers and duties are therein fully defined. There is nothing in this legislation violative of the right of any person or corporation. The property will go into the hands of such person as may be appointed receiver, subject to all just claims to it or upon it, and these may be adjusted in accordance with the well-settled rules applicable thereto."

And, finally, in *State v. Municipal Saving & Loan Co.*, *supra* (1924), 144 N.E. 736, 738, the Supreme Court of Ohio very correctly states as follows:

"In the long run, the Legislature has found it a financial advantage to stockholders of a corporation against which involuntary dissolution is asked by the state to have the affairs of the corporation in question administered by persons not interested in the action when the parties do not consent to the appointment of persons interested."

Judge Beatty also states that those most qualified to carry out the liquidation of a defunct entity are its last directors. (Page 369.) "Because a corporation has violated its duty" the Judge says, "it

does not follow that its members cannot be trusted to look out for their own interests. Quite the contrary; for it is usually a too exclusive regard for their own interest that constitute their dereliction to the public." This is denied by Judge Floy of Texas: "To place the property again in the hands of the officers of the corporation would be to return it to the custody of those who had failed to perform their trust, and had violated the laws of the state, and the public interests would not be subserved thereby." *San Antonio Gas Co. v. States*, *supra*, 289, 294.

And, finally, the California Justice holds that the state, not being a stockholder nor creditor and therefore lacking all interest in the property of the defunct corporation, cannot request the appointment of a receiver.

Leaving aside the contradiction which this affirmation involves (the right of the Attorney General to prosecute those who usurp franchises by means of quo warranto proceedings is recognized, but he is denied the means of avoiding the continuance and perpetration of such usurpation under other forms) we will allow the authorities to speak for us.

In *Olson v. Bank of Tacoma*, (1896) 45 P. 734, 735, the Supreme Court of Washington in construing certain legal provisions with regard to receiverships, said the following:

"Section 326 provides that a receiver may be appointed by the court in the following cases . . . 5 (When a corporation has been dissolved or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights. Such being the provisions of our statute, it seems too clear for argument that the court of proper jurisdiction has a right to appoint a receiver, at the instance of any party interested, whenever it is made to appear to it that such corporation is insolvent, or has forfeited its corporate rights. No other conditions are imposed by the statute, and to import any other would be judicial legislation."

And in *State v. Superior Court*, 47 P. 32, 34, the same court adds:

"After such a judgment has been rendered against the defendant as is provided for by section 688, proceedings may be instituted by the prosecuting attorney by virtue of section 689, in which it may be proper to appoint a receiver to take an account and distribute the property of the alleged corporation among its creditors, if any it may have."

We have commented the Havemeyer's opinion rather extensively not because we believe that the persuasive value of its doctrines justify such a comment, but out of deference to the distinguished attorneys for respondents who have given great stress to said case.

Even under the reactionary opinion of Judge Beatty, The People of Puerto Rico has a right to obtain the appointment of a receiver inasmuch as the pertinent statutes of Puerto Rico today are not the same as those imposed in California in 1890.

In the first place, section 184 of the Code of Civil Procedure of Puerto Rico provides that "No party, or attorney, or person *interested* in an action, can be appointed receiver therein, without the written consent of the parties, filed with the secretary". And a section similar to this has been recently construed to disqualify the directors and officers of a defunct corporation to act in the liquidation of the entity.

In *State v. Municipal Saving & Loan Co., supra*, (Supreme Court of Ohio, June 21, 1924), 144 N.E. 736, 738, it is held that a director of a corporation, for the purposes of the appointment of a trustee in liquidation, is an employee of the company, and, as such an interested party.

"Allen, J.:

"... Later in the same day the court of common pleas appointed the three trustees as receiver of the Municipal Savings & Loan Company. To this order plaintiff excepted, upon the ground that—

"Said persons are disqualified from such appointment by reason of their previous selection and appointment as trus-

tees of this corporation under section 11972 of the General Code of Ohio, and for other reasons appearing in the record of this case.

"Section 11894, par. 5, of the Ohio General Code, in the pertinent part, thereof; provides that receivers may be appointed by the court in cases provided for by special statutes when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

"Section 11895 of the General Code provides that:

"No party, attorney, or person interested in an action, shall be appointed receiver therein except by consent of the parties.

"The instant appointment is not a case of consent of the parties.

"Nor does this case arise under section 11944, General Code, which in part reads:

"A director, trustee, or other officer of the corporation, or any of its stockholders may be appointed a receiver . . .

"This section is a part of the chapter entitled 'Dissolution of Corporations', and refers only to cases of voluntary dissolution of a corporation. The instant case, however, is not one of voluntary dissolution. Hence this is not an action in which under the statutes it is permissible to appoint a director, trustee, or other officer of the corporation, or a stockholder as receiver."

"A receiver is a person indifferent between the parties appointed by the Court. He is appointed on behalf of all the parties and not on behalf of the complainant or defendant only; to receive and hold possession and control of any or all property which is the subject matter of litigation pending the suit, and subject to the orders of the court. *Baker v. Backus*, Adm'r., 32 Ill. 79.

"The purpose of the action herein brought was to transfer

possession of the property from the corporation to the receiver. The representative of the corporation were the trustees; they had possession of the property, and the action was for the purpose of taking possession of that property out of their hands, and to that extent was adversary as against the trustees."

"We shall now consider whether the trustees were interested in the action. It is conceded that 'interested in the action' means financially interested. The trustees in this case were appointees of the corporation; they were its employees to the extent that their compensation as trustee was subject to the action of the corporation."

"The trustees being appointed by the directors of the corporation, being responsible to the stockholders of the corporation, being entitled to compensation from the corporation, are agents and employees of the corporation. They are in fact persons interested in the action."

"The question here is not in what cases a receiver may be appointed; the question is: Who may or may not be appointed receiver? And that question is answered in the negative as to the three trustees by section 11895."

"It is conceded that the court has a certain discretion in the appointment of receiver, which discretion may not be interfered with except in circumstances of palpable abuse. This discretion, however, does not permit the court to violate the statute. In spite of their qualifications the three trustees were appointed receiver under unusual circumstances. They filed an answer challenging the power of the court to remove them, by appointment of a receiver, and hence by implication challenging the power of the court to place the corporate assets in custodia legis. They withdrew their answer and cross-petition and within a few hours were appointed receivers."

"Granting as we do everything that has been stated as to

the fitness of the men named, the very thing here done was forbidden by statute. It was forbidden by statute because it is of the utmost importance in receivership matters to avoid not merely evil but also the appearance of evil."

Judge Beatty does not mention in his opinion whether California at that time had a similar statutory provision.

Apart from this distinction we have still a more clear distinction. The *desideratum* in the *Havemeyer* case is the lack of interest of the State in the properties of the entity; the public interests and the obligations incurred with society were not considered by said Judge. However this lack of interest does not exist in our case.

In order to secure the right of The People of Puerto Rico to exercise its option of confiscating the properties of the dissolved corporation or of asking for the sale of said properties in public auction our statutes provide the following:

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months, counting from the date on which final sentence is rendered." (Section 1, Law No. 47, approved August 7, 1935; Laws of that year, Special Session, pages 530-532.)

This interest of The People of Puerto Rico in the real property of the corporation must be considered, by implication, as alleged in the petition, inasmuch as this is a right arising from the statute of which this court takes judicial notice.

And finally, to end this part of our reply, we need hardly add that the comments and distinctions herein made apply not only to the *Havemeyer* case but also to its offsprings or ramifications.

(c)

The insufficiency of The People of Puerto Rico's motion praying for the appointment of a receiver.

This last point need hardly be discussed. The petition of The People of Puerto Rico has not been made unseasonably as respondents contend, nor are the facts alleged therein insufficient as respondents also allege.

The motion has been seasonably filed. To allege the contrary would be equivalent to contradicting directly the very statute which authorizes the appointment of a receiver. "In the case when a corporation . . . has forfeited its corporate rights." In other words, it is after and not before the confiscation of the corporate franchise that the petition should be filed. The contingency—"has forfeited its corporate rights"—is the true point of departure to request and obtain the appointment of a receiver in this case. It can hardly be argued that the jurisdiction of this court ends at that point where it begins. The express terms of the statute as well as the decisions of the courts offer a ready answer to this question:

Section 4029 of the Code of 1906 provides for the appointment of such a trustee, but *only after judgment of forfeiture and ouster.*" (*Jackson Loan & Trust Co. v. State*, (Supreme Court of Miss., 1911), 56 So. 293, 295.)

After the corporate franchise has been forfeited the appointment of a receiver lies at any time when the need therefor arises. Thus, in *State v. Peabody Petroleum Co.* (Supreme Court of Kansas, Jan. 7, 1928) 262 P. 1027, 1029, after almost four years had elapsed since the confiscation of the franchise the state petitioned for and obtained the appointment of a receiver. The Chief Justice of said court said as follows:

"It is argued that the word 'upon' as used in the statute carries the inference that action must be taken when the dissolution occurs by reason of a forfeiture of the charter unless a receiver is appointed, and if this is not done at the time of

the forfeiture neither the state nor the stockholders and creditors of the corporation may take any action to compel the proper administration of the trust and to wind up the affairs of the company.

"We think this was not the legislative purpose in the enactment of the statute. The right to take action for the appointment of a receiver accrues when a corporation is dissolved, but it is not lost by the failure of the Attorney General to act immediately upon the declaration of forfeiture or a dissolution."

The argument therefore that the jurisdiction of this court ends upon the rendering of an unappealable judgment, because the proceeding has terminated, in the light of the provision of section 182 of the Code of Civil Procedure is an absolute absurdity.

Nor are respondents correct in contending that the motion of The People of Puerto Rico does not state sufficient facts. The cases involving forfeiture of franchises are necessarily based on the illegal conduct of the directors of the corporation and for this reason they are exceptional cases to which the authorities with regard to voluntary dissolutions cannot be applied.

The corporation due to its fictional personality acts through natural persons; its directors; and, when the forfeiture of the franchise is decreed because of illegal conduct on the part of the corporation it is decided at the same time that the directors are not qualified to act as trustees or receivers in the liquidation of the entity. It would be absurd to contend that The People of Puerto Rico must allege and prove again what it has already alleged and proved in this quo warranto proceedings. As the facts showing the necessity for the appointment of a receiver appears from the record of this case, the petition asking for the appointment is a mere formality. That this is so is demonstrated by the fact that when the statute so authorizes it the receiver may be requested in the quo warranto petition and his appointment may be decreed in the judgment ordering the forfeiture of the charter:

"The judgment against a corporation, in the case of a forfeiture of its charter, is that the franchises be seized into the hands of the state. *It may also provide for the appointment of a receiver or trustee to take possession of the property of the corporation, where the court is authorized to make the appointment, and where it is asked for in the information.*" (14 C.J. 1140, sec. 3777.)

Respondents allege finally that the proceeding against them has terminated; that there is nothing to liquidate inasmuch as the corporation has paid all its debts and that those who were its members have constituted themselves in a new entity under the form of a civil partnership; and that for this reason the petition of The People has no practical purpose. Respondent forgets however that the principal objective of this proceeding is not the punishment for a violation of its franchise but to protect the economy of the island by a distribution of the large land holdings in its possession. While these vast land holdings continue, under whatever name or possible form, it cannot be seriously contended that the question has been terminated.

The Congress of the United States in 1900 anticipated the remedy against the evils of large land holdings so as to avoid the impoverishment of our economy; and while this remedy is not applied in such manner which assures the eradication of this evil the question will continue pending.

"Surely nothing more immediately touches the local concern of Puerto Rico than legislation giving effect to the Congressional restriction on corporate land holdings. This policy was born of the special needs of a congested population largely dependent upon the land for its livelihood. It was enunciated as soon as Congress became responsible for the welfare of the Island's people, was retained against vigorous attempts to modify it, and was reaffirmed when Congress enlarged Puerto Rico's powers of self-government. Surely Congress meant its action to have significance beyond mere

empty words." (*People of Puerto Rico v. Rubert Hermanos*, Adv. Ops. Oct. Term, 1939, p. 618.)

Our legislature, also, alarmed by the increase of the evils which large land holdings create in Puerto Rico approved local statutes known as "the five hundred acre statute", all of them inspired in the purpose of dividing the large corporate land holdings. It would be inconceivable therefore that the intent of the Congress of the United States and of their own Legislature could be frustrated by a comedy of dissolution.

San Juan, Puerto Rico, July 16, 1940.

Respectfully,

GEORGE A. MALCOLM,

Attorney General.

MIGUEL GUERRA-MONDRAGON,

RAFAEL RIVERA-ZAYAS,

LUIS VENEGAS-CORTES,

Associate Attorneys.

Notified with copy this sixteenth day of July, 1940.

JAIME SIFRE, JR.,

Attorney for the Respondent.

[Title omitted.]

REPLY BRIEF IN OPPOSITION TO THE MOTION FOR
APPOINTMENT OF A RECEIVER.

[Filed July 15, 1940.]

Antecedents.

Petitioner has filed a brief setting out the reasons which in its judgment justify the appointment of a receiver. We proceed to answer it to demonstrate that petitioner's contention is untenable and that the motion should be denied.

Argument.

I.

The objective of the motion as per the motion and the objective of the motion according to the original brief of the Government.

We have maintained in our first brief that the motion filed by the petitioner does not invoke in adequate manner the jurisdiction which in the opinion of the petitioner this court possesses, for which reason, even within the hypothesis that jurisdiction exists, there is no ground for the exercise of judicial discretion. In said brief we called the attention of the court to the fact that The People of Puerto Rico in its motion limited itself to expressing its opinion that the dissolution and disposition of the properties *should be effected by a receiver* and that the motion so drafted requesting the appointment of a receiver does not adapt itself to the precedents established by this same court, and generally by the jurisprudence dealing with the requisites of an application, petition or motion for the appointment of a receiver. *Hardy v. North Butte Mining Co.*, 20 F. (2d) 967; 22 Cal. Jur., sec. 351, page 458; High, on Receivers, sec. 84, page 111; *Schluter v. Texidor*, 26 P.R.R. 97; *Balasquide v. Ros*, 18 P.R.R. 35; 53 C. J., sec. 43, page 53.

The jurisprudence as to this particular is so clear that there can be no doubt as to the correctness of our position, but should there be any doubt it would have to disappear in view of the statements made by The People of Puerto Rico in its original brief filed in support of the motion. In accordance with what is set out in the brief, The People of Puerto Rico requests the appointment of a receiver to maintain the status quo as to the properties pending the exercise of the option by The People of Puerto Rico to purchase them or to sell them at public sale. However, in the motion the appointment of a receiver is requested because in the judgment of the petitioner the process of dissolution and *disposition* of the properties of the respondent should be entrusted to a receiver.

These two theories are irreconcilable because the objective under the theory of disposing of the properties through a receiver, that is to say, of liquidating, is contrary to the objective of maintaining the status quo until the Government decides if it purchases them or forces their sale at public auction. And we are not dealing only with the insufficiency of the motion *but we are also dealing with a motion which fails to express the true objective of petitioner in requesting the appointment of a receiver and which not even insinuated that true objective or theory*, to wit, that of protecting rights which the Government pretends to have in accordance with its opinion and in accordance with its interpretation with which, of course, we do not agree under Law No. 47 of August 7, 1935.

If it is true that The People of Puerto Rico rests its petition for the appointment of a receiver upon the provisions of that law and under the theory that it sets out in its brief, it is indisputable that it should have set out in the motion the reasons and facts which in its judgment give it the right to obtain the appointment of a receiver under this legislation, in the first place in order that the court may consider and decide, with full knowledge of the issues, whether it has jurisdiction to act, and if so, in what form it should make use of its discretion; in the second place in order to give an opportunity to respondent to defend itself under that theory; in the third place, in order that with the motion and answer both the court and the parties may understand the issues under discussion, and lastly, so that the pleadings and not the briefs should set forth and define the issues.

There is not a single allegation in the motion suggesting or insinuating that a receiver is requested to protect The People of Puerto Rico in case that it should wish to purchase the properties. There is nothing in the motion that suggests or insinuates that The People of Puerto Rico desires a receiver as a means of imposing certain of the penalties of which Law No. 47, of August 7, 1935, speaks; there is nothing said in the motion that suggests or insinuates that to determine and decide whether the appoint-

ment should be made or not it is necessary to consider certain provisions of that law which have been attacked and in regard to which there has been no decision. Among such provisions are found those that pretend to give to the Government the right to purchase or that of forcing the sale at public auction.

"It is a doctrine firmly established that "where an application for the appointment of a receiver is based *on any particular ground*, the facts should be specifically set forth". 19 C. J., sec. 1750 (f), page 1531.

The "particular ground" on which the motion is based, according to the motion, is that the dissolution of the company and the disposition of the properties should be entrusted to a receiver. There is no allegation in the motion of the facts upon which petitioner bases its request for the appointment of a receiver *for that purpose and upon that ground*. The "particular ground" upon which the motion is based according to the brief of petitioner is that the appointment of a receiver should be made upon the theory (1) that the provisions of Law No. 47 of 1935 regarding the purchase of the properties by the Government or the sale at public auction are valid; (2) that perhaps The People of Puerto Rico will elect one or the other or neither of them; (3) that while the Government is making this decision it is necessary and proper that a receiver be appointed to maintain the status quo, but in the motion there is absolutely nothing alleged upon such basis, theory or ground.

And the opposing party may not contend that the total insufficiency of the motion is cured by the complainant or that the information or complaint complements the motion, because this doctrine is applicable when the petition for the appointment of a receiver specifically incorporates the allegations of the information or complaint and when both taken together present facts justifying the appointment, which is not the case here. And it is not true here for the following reasons:

The amended information or complaint did not present any other problem but that of adjudicating the right and title of Rubert

Hermanos, Inc., to continue doing business as a corporation in the Island of Puerto Rico. In the opinion rendered by this court on June 30, 1938, sustaining the amended complaint, this court said:

"The purpose of this proceeding is to determine the right and title of the respondent Rubert Hermanos, Inc., to continue doing business as a corporation in the Island of Puerto Rico."

All that the petitioner prayed as a remedy was:

"Wherefore, The People of Puerto Rico, by its said Attorney General, prays that this Hon. Court give judgment of ouster of its franchise against said corporation, ordering its immediate dissolution, prohibiting it to continue doing business in Puerto Rico and imposing upon it the corresponding fine, with such other pronouncements as in equity and justice may be pertinent."

The judgment that was entered decreed the forfeiture and cancellation of the corporate charter and of the articles of incorporation, further ordering the immediate dissolution of Rubert Hermanos, Inc. and the liquidation of its business. The judgment also imposed the payment of a fine, costs and attorney's fees. That is to say, in the petition the appointment of a receiver was not prayed for, nor any allegations made relative to such a remedy as the petitioner limits itself to question the right of respondent to continue doing business and to continue being a corporation, and limited itself to ask for judgment of the loss of the franchise, dissolution, prohibition to do business, etc., and the judgment entered was in accordance with the theory and prayer of the amended information or complaint. There is nothing in the information that shows the propriety or necessity or convenience of the appointment of a receiver. The only thing that is set out in the information is that the respondent violated its charter and the fundamental effect of the judgment is to cancel the charter or

franchise and decree the dissolution of the corporation. If under Article 182 of the Code of Civil Procedure the appointment of a receiver were mandatory or imperative upon the dissolution of a corporation being decreed or whenever a corporation should lose its rights as such and The People of Puerto Rico could request such an appointment, which is not the case,—*Havemeyer v. Superior Court*, 84 Cal. 327—it would be sufficient to show that there was a judgment of dissolution or forfeiture. But such is not the case, because the doctrine in Puerto Rico is that the appointment of a receiver under article 182 is discretionary and not mandatory, and this is the doctrine in California under article 564 of the Code of Civil Procedure of that State.

"Except where the moving party has some absolute right to the property sought to be controlled, appointment of a receiver rests largely in the discretion of the trial court. This discretion is not arbitrary or absolute, but a sound judicial discretion, which takes into account the circumstances of the case and is exercised for the purpose of protecting the rights of all parties to the action and to the property in controversy." 22 Cal. Jur., sec. 312, pages 435, 436; *California Delta Farms v. Chinese American Farms*, 204 Cal. 524; 269 Pac. 443; *Whitley v. Broadley*, 13 C.A. 740; 110 Pac. 596; *Davies v. Ramsdell*, 40 C.A. 432; 183 Pac. 702; *Fox v. Hood*, 44 C.A. 786; 187 Pac. 68; *Schluter v. Texidor*, 26 P.R.R. 97; *Balasquide v. Rossy*, 18 P.R.R. 33.

The information, the judgment and the motion, taken together, show nothing further than the dissolution of Rubert Hermanos, Inc. and the loss or forfeiture of its rights as a corporation, and because of what is said in the motion, the opinion or conclusion of petitioner that the dissolution and disposition of the properties should be entrusted to a receiver. As for the appointment of a receiver it is necessary that facts be alleged showing the necessity and propriety of the appointment and the reasons, circumstances and facts which should be carefully weighed and analyzed by the

court in order to exercise its judicial discretion in one sense or the other, it is evident that the information in this case does not cure the total and absolute insufficiency of the motion.

"It is intended by the appellant that neither the complaint nor the affidavit filed by the respondent at the time it applied for the appointment of a receiver states facts sufficient to justify the action of the court in appointing a receiver. There is no allegation, as we have seen, in the complaint itself, of any fact or facts authorizing the appointment of a receiver; and, if the affidavit filed by the respondent in support of its application does not set forth sufficient facts for such appointment, it would seem to follow that the objections of the appellant to the application should have been sustained." *Union Boom Co. v. Samish River Boom Co.*, 74 Pac. 54.

Clark in his work on "Receivers" states:

Rules Governing the Appointment of Receivers.

"The following general rules may be laid down governing the appointment by a court of a receiver:

"First: That the power of appointment is a delicate one, and to be exercised with great circumspection.

"Second: That it must appear that the party moving for a receiver has a title to the property or a lien on the property or such an equitable or legal interest in the property as the rules and usages of equity or the statutes enable a court to protect by the extraordinary remedy of the appointment of a receiver.

"Third: A court of equity will not appoint a receiver on demand of one alleging to hold the legal title as against the party in actual possession of the real estate with few exceptions, because such a claimant to the legal title has a full and adequate remedy at law.

"Fourth: The appointing court must be satisfied by affidavit

or other suitable evidence that a receiver is necessary to preserve the property or in exceptional cases administer the property.

"Fifth: That there is no case in which the court appoints a receiver merely because the measure can do no harm and consent of the parties cannot confer jurisdiction on the court to appoint where without consent it has not the power.

"Sixth: That fraud or immediate danger if the intermediate or final possession should not be taken by the court must be clearly proved.

"Seventh: That unless the necessity be of the most stringent character, the court will not appoint until the defendant is first heard in response to the application." (1 Clark, The Law of Receivers, sec. 651, pages 715, 716.)

The author adds at page 717, "The court must be satisfied by affidavit, or other evidence that a receiver is necessary to preserve the property." And we have seen that in the motion a receiver is requested because this is a means which according to the Government ought to be employed to dispose of the properties. We repeat what we have said in our first brief: that Rubert Hermanos, Inc. is not the owner of any property as its properties were transferred to a partnership that was organized by those who were the stockholders of the dissolved corporation and that it is the partnership that is the owner of the properties. But within the hypothesis that Rubert Hermanos, Inc. were still owner of the properties, we inquire: Is there any allegation in the information or in the motion as to the necessity of a receiver to dispose of the properties? Has the Government presented any evidence that would satisfy this court or which may be considered by this court as regards the necessity of such an appointment? There is a complete absence of allegations and proof. According to petitioner's brief the receiver is sought not to dispose of the properties but in order to maintain the status quo while the Government makes up

its mind as to what it should do. We again inquire: Is there any allegation in the information or in the motion relative to the necessity of a receiver to maintain the so-called status quo? Has the Government presented any evidence to satisfy this court or which may be considered by this court as to the necessity of the appointment under such theory? Neither allegations nor proof.

Assuming that Rubert Hermanos, Inc., were still owner of the properties and the motion were considered under the viewpoint of what it says, namely, from the viewpoint of the necessity of the appointment of a receiver to dispose of the properties, that is to say, liquidate; under this theory it is obvious that the court would have to consider if the trustees in dissolution were incapacitated to liquidate, inasmuch as according to our law the liquidation of a corporation corresponds to the directors of the corporation, unless upon judicial decree of liquidation a receiver is appointed at the instance of some creditor or stockholder. But such an appointment in such a case is made not only in accordance with our legislation, but also in accordance with the general doctrine, in extraordinary cases, when it is absolutely necessary, because courts are not inclined to impose the charges which a judicial administration carries with it if this is not plainly justified.

Within the theory advanced in petitioner's brief, the court would have to decide several questions, among them the one relative to the necessity of maintaining the so-called status quo by means of the appointment of a receiver and in order to do so it would have to consider, for example: if assuming that The People of Puerto Rico may elect to purchase the properties or to force their sale at public auction, it would not be duly protected by the *lis pendens* which according to petitioner is still in force. But as the pleadings do not raise any of these questions, the court can not proceed to decide them. The Government, due to the form of its motion, has not permitted that the issues be punctualized and defined.

II.

The theory set out by petitioner in its original brief that this proceeding is still pending because The People has not yet elected for either the confiscation or sale and that for that reason this court has jurisdiction to appoint a receiver, is not sustainable.

At last the representatives of the Government have divulged their true pretensions and purposes. In spite of their repeated protests that they had no intention to require the imposition of the penalties of confiscation or sale provided by Law No. 47 of 1935, they now request that this court appoint a receiver for the purpose of making such penalties effective. Not only do they arrogate the power of the legislature to exercise options established by law, but they also arrogate the power to establish and declare public policy.

Under the heading "Principal Objective of the Motion Discussed" the attorneys for petitioner say in their original brief that:

"The principal objective of the motion for receiver that is discussed is the preservation of the status quo as to the lands that respondent possesses in excess of 500 acres, until the proceeding is terminated."

"This question is governed by Law No. 47 (special session) approved the 7th of August, 1935. This law amendatory of the quo warranto statute of 1902, in the second paragraph of section 2, provides that 'The People of Puerto Rico may, at its option, *within the same proceeding*, institute the confiscation of the said properties in its favor or the sale at public auction within a term not more than 6 months counted from the date on which the final judgment is entered. In every case the sale or confiscation shall be made upon the corresponding indemnity in the form established in the law of eminent domain' . . .

"The final judgment was entered on the 13th of May, 1940, if we count from the date on which the mandate was

received in the Secretary's office in the Supreme Court. The People has until 6 months afterwards—until November 13, 1940—to elect either the expropriation or the public sale in this same proceeding of quo warranto. And it is for the purpose of leaving things in the same situation and state in which they were before that a receiver should be appointed by this Honorable Court until The People of Puerto Rico decides the procedure that it will elect in the future.

"If The People of Puerto Rico has this right of option and this option may be exercised within a period of 6 months counting from the date on which final judgment is entered, it is just that this Honorable Court should support it in this right."

The petitioner maintains that this proceeding is still pending because The People has not elected for the confiscation of the properties or the sale at public auction, and that as the suit is still pending the court has jurisdiction to appoint a receiver. The opposing party is mistaken because if at any moment the petitioner could have elected for the confiscation of the properties or for the sale, such moment passed once final judgment was entered without The People of Puerto Rico having attempted to make use of this so-called option.

It is necessary that the option for the confiscation or sale at public auction of the real estate of corporations respondent in quo warranto proceedings instituted under the quo warranto law, as amended by Law No. 47 of 1935, be exercised by appropriate allegations in the information or complaint by which the proceedings are begun.

The legal provisions relative to confiscation or sale at public auction of real estate of corporations respondent in quo warranto proceedings are found in sections 2 and 6 of the Law of Quo Warranto, as amended by Law No. 47, approved August 7, 1935. It is necessary that these two sections be read together for their proper interpretation. Section 2 provides that:

"When any corporation by itself or through any other subsidiary or affiliated entity or agent, is illegally possessing by any title real property in Puerto Rico, The People of Puerto Rico may, at its option, within the same proceeding, institute the confiscation of said properties in its favor, or the sale thereof at public auction, within a period not later than six months counted from the date on which final judgment is entered.

"In every case the confiscation or sale shall be made upon the corresponding indemnity in the form established by the law of eminent domain."

Section 6 provides:

"In all cases in which it is satisfactorily established in the judgment of the court that the corporation or corporations have realized acts or exercised rights not conferred by law or in contravention of the express provisions of the same, in the judgment entered there shall be decreed the dissolution of the defendant entity; if it be a domestic corporation, the prohibition from continuing to do business in the island, if it be foreign, the nullity of all acts and contracts realized by the corporation or defendant entity, and there shall furthermore be decreed the cancellation of the entries or inscriptions of the same in the public registries of Puerto Rico, and when the decree of nullity affects real property and The People of Puerto Rico has elected for the confiscation or the sale of the same at public auction is ordered, the final judgment shall fix the reasonable price that ought to be paid for the same. To this end the just value of the properties subject to sale or confiscation should be fixed in the same manner fixed in cases of eminent domain."

It is necessary, therefore, for the confiscation or sale at public auction:

(1) That The People of Puerto Rico, through the branch called upon to exercise the option, that is, the Legislature, declare

through appropriate legislation, the intention of The People of Puerto Rico to exercise that given option;

(2) That in the proceeding proof should have been presented in order that the court may fix the just value of the property subject to sale or confiscation, and that in the final judgment the confiscation or sale at public auction be decreed, fixing the reasonable price in the form provided in cases of eminent domain.

The term of six months provided in section 2 of the law is the term within which it is necessary to make the sale which may have been ordered in the final decree or judgment.

In the present case The People of Puerto Rico, by its authorized representatives, has not elected either for the confiscation or for the sale at public auction; within this proceeding it has not asked either for the confiscation or for the sale, and the court in its judgment has not decreed the confiscation or sale nor fixed the price.

In a proceeding of quo warranto there can be only one final judgment:

"Except where by virtue of statute, separate judgments may be entered as to different defendants, there can be only one final judgment in any action; and, therefore, when such a judgment has once been entered, no second or different judgment can be rendered between the same parties and in the same suit, until the first shall have been vacated and set aside or reversed on appeal or error." (33 C. J. page 1193.)

And if the judgment entered in this case on the 30th of June, 1938, had not been a final judgment, said judgment would not have been appealable. U.S.C., sec. 225, Title 28.

The representatives of The People of Puerto Rico, in the argument of this case before the Supreme Court of the United States expressed the opinion that if The People of Puerto Rico wished to make use of the option to confiscate or sell at public auction after the judgment it would have to do so through a new proceeding. To this effect Colonel Rigby said:

"If it did (exercise the option), it would have, as I have said before, as we understood it, to file a supplemental bill or some new action in court, or begin a new action and proceed and give the respondents their day in court, *because there is nothing in this case to authorize a summary proceeding, upon the face of this record.* There is nothing of that kind in this judgment at all."

The construction that petitioner gives to articles 2 and 3 of the Law No. 47 of 1935—that are now, according to the Government's brief, the provisions on which the motion requesting the appointment of a receiver is based—leads to an absurdity. According to this construction, The People of Puerto Rico, by its representative the Attorney General, may wait six months after final judgment is entered to decide whether it is going to elect between the confiscation or sale of the properties of the corporation dissolved by said judgment. If the Government decide to exercise this so-called option, without initiating any other proceeding or action and without other allegations than those contained in the original information or complaint, the court, according to this construction, is obliged to hold a hearing to satisfy itself by competent and relevant evidence of the true value of the properties which it is pretended to confiscate or sell at public auction—the value that they may have on the date of the hearing, that is, more than six months after the judgment is entered. No one can say what length of time would be consumed in the presentation of evidence or when the court would be in a condition to fix the price. It may take a month, perhaps two months, may be longer; and then, according to the pretensions of the petitioner, the real property must be divided in parcels to be sold to "many agriculturists", which means a series of sales. In such a case the court would have to fix a price not for the properties as they exist, but the value of parcels or tracts in which they are to be divided in accordance with the opinion or caprice of the representatives of the Government. What disposition the attorneys

for petitioner could or pretend to make of the sugar factory, buildings, railroad, appliances and other effects, we do not know. In the original brief of the Government there is a mention of excess lands, but in the motion the appointment of receiver is sought not for such excess lands, but for all the properties that belonged to Rubert Hermanos, Inc., and the Law No. 47 itself does not limit confiscation or sale to excess lands but covers the confiscation or sale of all real property.

At a later point we will show that the same attorneys who now insist upon the appointment of a receiver under the theory of the provisions of said Law No. 47 of 1935, have maintained and have been of the opinion that in order to obtain the confiscation and sale at public auction under the provisions of said law, it is necessary that the same should have been requested or sought in the information or complaint of *quò warrantò*.

The term of six months that section 2 of Law No. 47 fixes is the maximum term within which it is necessary to make the public sale ordered in the final judgment; the phrase "within a term not greater than six months" limits and is applicable to the phrase "the sale at public auction". Grammatically and in accordance with the rule of statutory construction (last antecedent rule) the words "within a period not greater than six months" apply to and qualify the words "sale at public auction" that immediately precede, and not the word "option". *Puget Sound Electric Ry. v. Benson*, 253 F. 710; *State, ex rel. Stewart v. District Ct.*, 65 Pac. (2d) 141; *Hopkins v. Anderson*, 21 Pac. (2d) 560; *Board of Port Comm'r's v. Williams*, 60 Pac. (2d) 454; *Taylor v. Prudential Ins. Co.*, 253 N.Y.S. 55.

It is clear that the court could not decree the confiscation or the sale at public auction unless the petitioner had alleged in the information that it had elected in the same proceeding to request in the final judgment or decree either the confiscation or the sale.

III.

Even though the real property that belonged to Rubert Hermanos, Inc., were still under the ownership, possession and control of said corporation or of its trustees, the court would lack jurisdiction to decree the confiscation or the sale at public auction of said properties because the provisions of said Law No. 47 establishing penalties of confiscation or sale at public auction of the properties of corporations respondent in proceedings of quo warranto are invalid. This court has implicitly recognized this.

From the very first moment respondent has attacked in this court the validity of Law No. 47 of 1935 and one of the principal grounds of such attacks has been that the penalties decreed therein convert said law in an ex post facto law. This court never decided or expressed an opinion as to this contention.

Furthermore, this respondent in this case maintained before this court that, as to such penalties, the law should not be given retroactive effect.

Said Law No. 47 of 1935 in its section 2 made it mandatory upon this court, in the judgment which it might render when "it is satisfactorily established . . . that the corporation or corporations have realized acts or exercised rights not conferred by law", to decree such penalties.

In the judgment rendered in this case this Honorable Court has not decreed any of such penalties. It is not admissible to assume that this Honorable Court has refused to comply with a valid mandate of the legislature. The only inference permissible from the omission of such penalties in the final judgment is that the court considered either that said penalties were invalid or that as to such penalties said law did not have a retroactive effect.

It is impossible to conceive that in a country where the American Constitution and the system of laws that we have are in force the Attorney General or any officer or branch of the Government has the power to impose a penalty in one case and under identical circumstances relieve from such penalty in another case. We

refer to the provisions of section 2 of Law No. 47 of 1935 amendatory of the law of quo warranto which referring to the so-called option state that "The People of Puerto Rico may, at its option, institute the confiscation of the property in its favor, or the sale at public auction." In other words, that in a given case the government might request the confiscation; in another the sale at public auction, or neither of the two penalties. If this could be done then it is unquestionable that the guaranty as to the equal protection of the law, would lack all meaning and effect.

If this court had had any idea that in this proceeding the imposition of the penalties established by said law were possible after judgment, it would have deemed its duty to determine as to the validity of the statutory provisions establishing such penalties in order that its decision on this point could have been examined and passed upon by the appellate tribunal. We believe that this court was of opinion, whatever may have been the basis of said opinion, that in this case there was not involved any question relative to the imposition of said penalties, a belief that is fully justified by the language of the opinion and judgment entered in this proceeding.

IV.

The Attorney General is not authorized to exercise the option that the law pretends to confer upon The People of Puerto Rico.

There is no law that empowers the Attorney General to exercise the option that Law No. 47 of 1935 pretends to grant to The People of Puerto Rico. Section 1 of said law reads in part: "The People of Puerto Rico may, at its option, institute etc." and section 2 provides that: "... and The People of Puerto Rico should have elected". So that the duty and power of election is in The People of Puerto Rico and not in the Attorney General.

The representatives of petitioner say in their original brief that "The People of Puerto Rico has until six months after—November 13, 1940—to elect either for the forcible expropriation or for the sale at public auction in the same proceeding of quo

warranto." We understand that this recognizes that the Attorney General may not exercise the option.

If it is also admitted that the only branch of the Government that can exercise said option is the legislative branch, the consequence is that it would be necessary to have a session of the legislature in order that this body should decide. We know that unless the Governor convokes an extraordinary session of the legislative assembly there will be no session of the legislature until the second Monday in February, 1941. According to the theory of petitioner during all this time the receiver would be in possession with all the expenses and consequences that his appointment would entail, without any guaranty that at the end use of the option would be made to purchase or to sell at public auction, or for either of them, because all would depend on what the legislative branch decides.

There is no probability that the legislature will be convoked within six months. Neither can anyone say that in case it were convoked for an extraordinary session during said term, the Governor would include this matter in the call. After the judgment of June 30, 1938, was entered there have been two regular sessions of the legislature, and it seems at least probable that if there had been the slightest intention on the part of the legislature to act, it would have done so in one of said two sessions, either at the instance of the legislature itself or upon request of the executive officers of the Government of Puerto Rico.

V.

Neither the Attorney General nor his officers of the so-called bureau of the five hundred acres may establish or declare the public policy of The People of Puerto Rico.

In their brief the representatives of petitioner say that the fundamental spirit of the land law is "The distribution among many agriculturists of the lands possessed by corporations in excess of the limit fixed by law" and that said lands should not "revert to the same or a few hands".

They do not specify in what land law such provisions are found. But this is not the first time that the representatives of petitioner have stated, in one form or another, that the public policy of Puerto Rico is to prohibit the accumulation of great areas of land in the hands of one or few entities or persons. And we have also noted that in statements published in the "World Journal" of March 26, 1940, by Guerra-Mondragon, Esq., he declared that it was the intention of the Government, in the quo warranto cases, to ask for the appointment of receivers to sell the lands of defendant corporations in small parcels, but little by little so as not to affect the prices.

Of course, the public policy that the representatives of petitioner attempt to define is imaginary, it has never been declared by the only authorized source, namely, the Legislature.

Public Policy.—It is generally recognized that the public policy of a state is to be found in its constitution and statutes, and only in the absence of any declaration in these instruments may it be determined from judicial decisions. In order to ascertain the public policy of a state in respect to any matter, the acts of the legislative department should be looked to, because a legislative act, if constitutional, declares in terms the policy of the state and is final so far as the courts are concerned. All questions of policy are for the determination of the legislature, and not for the courts, and there is no public policy which prohibits the legislature from doing anything which the constitution does not prohibit. Hence the courts are not at liberty to declare a law void as in violation of public policy. In accordance with these general principles, it has been said that if a state constitution authorizes a grant, through legislative action, of an exclusive privilege, it must be deemed to be in accord with the policy of the state. Where courts intrude into their decrees their opinion on questions of public policy they in effect constitute the judicial tribunals as law-making bodies in

usurpation of the powers of the legislature." (6 R.C.L., pages 109, 110; *Chicago B. & I. R. Co. v. McGuire*, 219 U.S. 549; *Mutual Loan Co. v. Martell*, 55 U.S. 328; *Hunter v. Pittsburgh*, 207 U.S. 161; *Green v. Frazier*, 253 U.S. 233; *State Tax Comr's. v. Jackson*, 283 U.S. 527.)

"It is generally recognized that the public policy of a state is to be found in its Constitution and statutes. Only in the absence of any declaration in these instruments may it be determined from judicial decisions. The Supreme Court has pointed out the limitations both of judicial declaration of public policy and of the application of the theory, stating that the theory of public policy embodies a doctrine of vague and variable quality and, unless deducible in the given circumstances from constitutional or statutory provisions, should be accepted as the basis of a judicial determination, if at all, only with the utmost circumspection.

"In order to ascertain the public policy of a state with respect to any matter, the acts of the legislative department should be looked to, because a legislative act, if constitutional, declares in terms the policy of the state and is final so far as the courts are concerned. With the foregoing considerations as its basis, the rule has become settled that all questions of policy are for the determination of the legislature, and not for the courts. In accordance with these general principles, it has been said that if a state constitution authorizes a grant, through legislative action, of an exclusive privilege, it must be deemed to be in accord with the policy of the state.

"Where courts include in their decrees their opinions on questions of public policy, they in effect make the judicial tribunals law making bodies in usurpation of the powers of the legislature. Although public policy and comity may be decisive in the determination of what law shall be applied in given circumstances, the judges may not recognize or deny, at their pleasure or caprice, the rights which individuals may

claim under it, but the rule thus adopted, having obtained the force of law by user and acquiescence, belongs only to the political department of the state, as far as changes are concerned, whenever such changes become desirable." (11 American Jurisprudence, pages 813, 817.)

Until now the only public policy of Puerto Rico established by law as regards the ownership and control of lands is found in the Joint Resolution of Congress which has been incorporated in the Organic Law in force and in the Law of Corporations of Puerto Rico. It is declared by implication in said laws that it is against the public policy that corporations authorized to engage in agriculture should possess and control more than 500 acres of land in Puerto Rico. There is no such prohibition or declaration of public policy as the representatives of petitioner pretend, that is to say, that said prohibition is extensive to persons, communities and entities not corporations, and until such prohibition and limitation has been decreed by or incorporated in a valid law the public policy which the attorneys for petitioner invoke does not exist.

VI.

Petitioner is estopped by the statements and representations of its attorneys before the courts, to request the confiscation or sale at public auction of the properties that belonged to respondent.

By demurrers filed in this court, respondent Rubert Hermanos, Inc., contended that the provisions of Law No. 47 of 1935, establishing penalties were invalid as repugnant to the provisions of the Organic Act of Puerto Rico and particularly to those that prohibit the passage of ex post facto laws. Rubert Hermanos, Inc., further contended that the said provisions were not separable from the other provisions and that therefore they invalidated the entire act.

This Honorable Court did not deem it necessary to decide regarding the validity of the provisions that establish the penalties. Precisely for the reason that the attorneys for respondent feared

that attorneys for petitioner would attempt to obtain the imposition of said penalties and to avoid that at any moment it might be alleged or sustained that respondent had waived its contention regarding the invalidity of the same, respondent filed an appeal to the Circuit Court of Appeals for the First Circuit from said judgment rendered by this court.

In the brief filed in said court by respondent-appellant its attorneys again presented their arguments attacking the validity of said provisions of a penal character.

In the brief of The People of Puerto Rico—appellee in the appeal of this case before the Circuit Court of Appeals, signed by the then Attorney General of Puerto Rico, Mr. Benigno Fernandez-Garcia and by Messrs. Miguel Guerra-Mondragon, Rafael Rivera-Zayas and others, the representatives of the appellee made the following statements (pages 54–55 of said brief):

“Third: No questions under those additional penalties has ever been raised in this case. As hereinbefore pointed out (Ante, Point X), no such penalties were adjudged by the court in this case. They were not asked for by The People, either in the original complaint or in the Amended Complaint or at any other time during the progress of the case; and were not imposed in the court's judgment. The penalties there imposed are simply those which were authorized by the quo warranto statute prior to its amendment in 1935. There is, therefore, *in this case, no room for any question* as to whether or not, had there been an attempt made to impose those penalties on this corporation defendant, then such application, under all the circumstances of this case, would (or would not) have been the imposition of ex post facto penalties. *That question is not here.* If the imposition of such penalties against it should ever be mooted in any future proceeding, this corporation would then have ample opportunity to raise this question and to defend itself in that proceeding.”

When this case was argued before the Circuit Court of Appeals and answering statements made by the attorneys for Rubert Hermanos, Inc. to the effect that the principal purpose of having appealed had been the fear that the representatives of The People of Puerto Rico would attempt to apply the penalties provided by Law No. 47 of 1935, Attorney Guerra-Mondragon stated to the court that he was greatly surprised by the statement of the representative of appellant because the attorneys for The People of Puerto Rico not only had not asked that the penalties of confiscation, sale and others established by the said law be imposed, but had stated frankly in The Supreme Court of Puerto Rico that they had no intention of asking that such penalties be imposed. To these statements the attorney for respondent-appellant, Mr. Brown, answered that if the representatives of The People of Puerto Rico would give any security that they would not attempt to obtain the imposition of such penalties then Rubert Hermanos, Inc., would immediately dismiss the appeal.

And in the brief presented by Rubert Hermanos, Inc. in the Supreme Court of the United States in opposition to the petition for certiorari filed in said court by the attorneys for The People of Puerto Rico, attorneys for appellant, then respondent, repeated (page 13):

"Respondent declared its willingness to abandon its appeal, dissolve and pay the fine and costs imposed by the Supreme Court upon an assurance by petitioner that no attempt to enforce the forfeiture and penalties legislated in Act No. 47 would be made. No such assurance was ever given."

Answering the brief of Rubert Hermanos, Inc., petitioner The People of Puerto Rico, in its opposing brief, which has the names of Messrs. William C. Rigby, and George A. Malcolm, Attorney General of Puerto Rico, as attorneys for The People of Puerto Rico in the proceeding of certiorari, at page 3, stated:

"No reply to this seems necessary. It seems hardly neces-

sary to point out that, if the insular government had 'chosen' to confiscate this respondent corporation's lands under that provision of the statute, *it would have been necessary for the government to set up, by proper allegations (either in this proceeding or in some other proceeding), that it had so 'chosen' and to ask for a decree of confiscation on that basis, and thus submit the matter to the court for decision; and that, of course, in any such proceeding the respondent corporation would have been entitled to its day in court, and to its opportunity to combat the government's claim of right to have so 'chosen' to confiscate the land.*

"And, in such a case, the corporation would have the opportunity, among other things, if it so desired, to set up (and to be heard upon) its contention that, with regard to its lands purchased prior to 1935, the application of those provisions of that statute would be in the nature of an *ex post facto* proceeding.

But None of Those Questions is Here. The government has not so 'chosen' to confiscate this corporation's lands. No such allegation is in the complaint here. Accordingly, the Circuit Court of Appeals, like the Insular Supreme Court, ignored this contention of the respondent."

In the brief filed also in the Supreme Court of the United States by The People of Puerto Rico in said certiorari proceeding, which brief has the names of Messrs. William C. Rigby, Miguel Guerra-Mondragon, George A. Malcom and Rafael Rivera Zayas, as attorneys for petitioner, they made to the court, at pages 60 and 61 of said brief, the same statements that we have previously copied.

In the argument before the Supreme Court of the United States Colonel Rigby, one of the attorneys for The People of Puerto Rico, stated:

"Those penalties, however, as we see it here, are not involved in this case because there is no prayer here for the

imposition of any penalty except the dissolution of the corporation itself, the fine and the costs which have been provided for by the original quo warranto statute."

Then the following dialogue took place between the Chief Justice of the court and Colonel Rigby:

"The Chief Justice: Was there any provision with respect to the disposition of property that had been acquired by the corporation?

"Mr. Rigby: There is a provision that if the Island Government has so chosen, there shall be a forfeiture of the property and a cancellation of all the entries in the records.

"The Chief Justice: You mean forfeiture to the Government?

"Mr. Rigby: To the Government; that has not been asked in this case. Our opponents call attention to that and say the existence of that provision for the penalty makes this an *ex post facto* law, because these penalties were imposed after the organization of this corporation.

"Our answer to that is twofold; in the first place, as I have said, that that has not been asked in this case nor adjudged by the Supreme Court of Puerto Rico; that if later on an attempt should be made to enforce the penalties, proper allegations would have to be made and the company would have its day in court upon them."

And answering a question of Justice Frankfurter, Colonel Rigby said:

"Under this Act 47 of 1935, if the insular government had so chosen, these additional penalties may be imposed by the court, but there is no allegation here that the insular government has so chosen. There is no decree of that kind.

"Now, as I said before, that last clause is not, as we see it, of any consequence in this proceeding, because the People of

Puerto Rico have not chosen to confiscate it, and there is no prayer to that effect in the complaint, and there is nothing of that kind in the judgment of the court."

Then Mr. Justice Stone asked:

"How is their choice evidenced, by a suit?

"Mr. Rigby: I presume it would have to be by a suit, by a suit, by some formal action of some kind. Nothing of that kind is here so far as the facts in this case are concerned. The prayer is only, as I read, in the usual form, under quo warranto procedure for forfeiture of charter, license to do business, dissolution of the corporation, fine and costs—and that is all that has been ordered. So, normally what would follow that in effect would be a requirement of dissolution by the stockholders in the manner pointed out by the corporation law, and, if necessary, the appointment of a receiver and the winding up of the business of the corporation, as the business of any corporation is wound up upon death of the corporation, for any purpose at all or for any reason."

Upon the representative of respondent Rubert Hermanos, Inc., commenting on the fact that they had not been able to obtain any statement from the Supreme Court with regard to the provisions of Law No. 47 of 1935, relative to penalties, the following dialogue took place:

"Mr. Justice Stone: There has been a decree against you on that point?

"Mr. Brown: No, your Honor.

"Mr. Justice Stone: It will be time enough to raise that question when there is. It is not necessary that we make any commentaries. The rule that one who comes into equity must come with clean hands applies to an applicant for receiver." Pomeroy's Equity Jur. (4th ed.) sec. 1488.

VII.

Counsel for petitioner is mistaken in maintaining that Rubert Hermanos, Inc. is not dissolved because the certificate of dissolution has not been published.

If the publication of the certificate of dissolution issued by the Executive Secretary of Puerto Rico were necessary in this case, it is obvious that the appointment of a receiver to make such publication would not be necessary and that, according to the petitioner, is the only thing lacking to effect the dissolution of Rubert Hermanos, Inc. The fact is, nevertheless, that the corporation was dissolved by and as a consequence of the judgment of this court that decreed the forfeiture of the charter and articles of incorporation of the company.

Petitioner says at page 9 of his original brief "that what is here involved is not a proceeding for dissolution but one of forfeiture of the license or charter of a corporation. The two things are quite distinct". If this does not involve a proceeding for dissolution, then for what purpose is it argued that dissolution can only be effected when the certificate of dissolution has been published, and why ask for the appointment of a receiver as a means of effecting the dissolution? See the motion for appointment of receiver.

Our opponents may say whatever they wish, but the incontrovertible fact is that Rubert Hermanos, Inc., by the judgment rendered by this court has no articles of incorporation or charter and is dissolved. It is impossible to conceive that after a decree of this nature the omission of the Executive Secretary of Puerto Rico to issue the certificate of dissolution or the omission of the officers or directors of the corporation to publish it in case it should be issued, can have the effect of continuing, in conflict with the judicial decree, the life of the corporation. In maintaining that Rubert Hermanos, Inc. will not be dissolved until the certificate of dissolution is published, petitioner relies on the provision of article 26 of the Corporation Law, stating to that effect at page 8 of its original brief:

"Corporations die and are dissolved not when the stockholders agree among themselves, but, as article 26 of the Law of Corporations (Code of Commerce, 1932 edition, page 355) provides, when the executive Secretary issues the certificate of dissolution and this certificate is published during four consecutive weeks in a newspaper of this island."

We are not dealing with a voluntary dissolution—the kind of dissolution to which article 26 of the Law of Corporations refers. We are dealing with the forfeiture of the charter and articles of incorporation judicially decreed.

In Puerto Rico, as in the various states and territories of the United States, there exist two kinds of dissolution of corporations. Voluntary and involuntary. For voluntary dissolution the surrender of the franchise of the corporation and the consent of the Government to such surrender are necessary. Such voluntary dissolution is effected in Puerto Rico in the form provided by article 26 of the Law of Corporations entitled "Law to put in force a law of private corporations". The consent of the Government is evidenced by a certificate issued by the Executive Secretary of Puerto Rico, as provided in said article 26. Involuntary dissolution occurs (1) when the legislature repeals the franchises; (2) when the dissolution is decreed by a competent tribunal in a proceeding of quo warranto. A corporation is also dissolved by expiration of the term for which it was organized in accordance with the articles of incorporation. In this last case the dissolution is effected by operation of law. In the cases of repeal of franchise by the legislature or a decree of dissolution made by a court in a proceeding of quo warranto, the dissolution results from the law repealing the franchise or from the judgment. In neither of the two cases of involuntary dissolution is the intervention of the executive secretary necessary, who has neither discretion nor power other than to take note of the law or decree that effects the dissolution. Neither has the Attorney General nor any other officer of Puerto Rico power to review or obstruct a dissolution decreed by the legislative power or by the judicial power.

As we have said; a corporation is dissolved by virtue and effect of a judgment of a court in a proceeding of quo warranto as soon as such judgment becomes final.

"Judgment against corporation.—The effect of a judgment of ouster against a school district is immediately to dissolve the corporation, work its dissolution, and take away all its rights, liberties, privileges and franchises. The dissolution of a municipal corporation by the judgment of the court on quo warranto operates as an absolute revocation of all power and authority on the part of others to act in its name or behalf; but after a judgment of ouster and dissolution has been rendered against a private corporation, it is a matter of indifference to the state that a new corporation, complying with the general law relating to the organization of corporations, has appropriated and is using the name of the extinct corporation." 51 C. J., page 362.

"Where the dissolution proceedings are had under statute, dissolution takes effect as of the time designated by the statute. The general rule is that in case of an ipso facto dissolution it takes effect as an effectual and legal dissolution immediately on the forfeiture of the charter of the corporation, except where certain initial steps are by statute made necessary conditions precedent; but that in the case of a dissolution under judicial proceedings the dissolution takes effect as an effectual and legal dissolution only on the judicial determination of a competent court or tribunal." 19 C. J. S. p. 1413.

"Although there is some authority to the contrary, the general rule is, unless a statute otherwise provides, that the effect of a dissolution of a corporation is to put an end to its existence for all purposes whatsoever and to destroy every one of the faculties possessed by it, dissolution constituting corporate death, so that thereafter it cannot make by-laws or hold meetings; and, as discussed in detail in the sections

following, it can no longer make or take contracts or sue or be sued, all actions by or against it abate, all debts to or from it become extinguished, its real property reverts to the grantors or donors thereof or their heirs, and its personal property escheats." 19 C. J. S. 1486.

"The common law rule that dissolution of a corporation completely terminates its existence is generally modified by statutes regulating the duties, powers, responsibilities and liabilities of corporations after dissolution, and under such statutes a corporation may continue to have a limited existence for some purposes even after its dissolution, during the statutory period of continuance. Although dissolution destroys a corporation's power to continue its business under the charter, it still exists for the purpose of winding up its business and closing its affairs. Under the right to continue its business for winding up purposes, the corporation has authority to do whatever is necessary as an incident to such winding up, and the rights of claimants to corporate funds are fixed as of the date of the decree of dissolution." 19 C. J. S. p. 1487.

See: Fletcher Cyc. Corporations (permanent edition) sec. 8114. Article 27 of the Law of Corporations of Puerto Rico continues the corporate life for certain purposes after dissolution:

"All corporations, whether they expire through the limitation contained in the articles of incorporation, or are annulled by the Legislature, or otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital; but not for the purpose of continuing the business for which they were established."

Sections 36 and 26 (a) of the "Act to establish a Law of Private Corporations" provide the methods for the dissolution of do-

mestic corporations; section 26, as to corporations that have engaged in business, and 26 (a) as to corporations that no part of their capital has been paid in and have not engaged in business. The provisions of section 26, we repeat, refer and are only applicable to voluntary dissolutions and have no application whatsoever to involuntary dissolutions.

Attorneys for petitioner and the office of the Executive Secretary of Puerto Rico have knowledge of the judgment rendered by this court dissolving Rubert Hermanos, Inc. In their original brief they omit to mention the fact that a certified copy of this judgment was filed in the office of the Executive Secretary on the 28th of March, 1940, with a petition signed by all the stockholders requesting that the Secretary should make an entry of said judgment dissolving Rubert Hermanos, Inc. Neither do the attorneys for petitioner advise the court in their original brief, that since the 29th of March, 1940, the attorneys for the Government had knowledge of the fact that this petition had been filed. They also did not inform the court that the Department of Justice had been consulted by the Executive Secretary of Puerto Rico, immediately upon such petition having been filed, of the fact that it had been filed and they attached to said original brief a certificate issued by the Assistant Executive Secretary of Puerto Rico which is manifestly mistaken because it expresses an opinion which the Executive Secretary is not authorized to give and because it does not place the court in possession of the facts necessary to form an opinion. For example: in said certificate the Assistant Executive Secretary of Puerto Rico certifies that from the records of his office it appears that Rubert Hermanos, Inc. is a corporation organized under the laws of Puerto Rico and has not been dissolved up to the date of the certificate in any of the forms provided by law, but makes no reference in said certificate to the petition filed by the stockholders of Rubert Hermanos, Inc. accompanying copy of the judgment rendered by this court and requesting that he take note of the same and of the dissolution of the company. Upon reading the certificate of the Assistant Executive Secretary

of Puerto Rico filed with the original brief of petitioner, and noting that he made no reference whatsoever to the filing of said petition, we requested the Executive Secretary of Puerto Rico to issue a certificate showing that said petition had been filed on the 28th of March, 1940, that is, almost four months ago. We attach said certificate to this brief. There is also attached to this brief a letter addressed by the Assistant Executive Secretary of Puerto Rico, on the 10th of July, 1940, to the undersigned attorneys, and we wish to call particularly to the attention of the court the last paragraph of said letter which reads as follows:

"Please be advised that immediately upon receipt of the petition for dissolution this office took proper steps to obtain legal advice as to the course to be pursued and will terminate this matter as soon as we receive indications as to the correct procedure."

If necessity or occasion to do so arises, we will present evidence to show that immediately upon receipt in the office of the Executive Secretary of Puerto Rico of the petition filed by the stockholders of Rubert Hermanos, Inc., requesting that he should take note of the judgment and dissolution of the company, the office of the Executive Secretary of Puerto Rico consulted the department of justice as to the action that should be taken in regard to said petition, and that in spite of some four months having elapsed since this request for an opinion it has not been answered. In other words, we are dealing with a very peculiar case. The representatives of petitioner, The People of Puerto Rico, contend that Rubert Hermanos, Inc. is not dissolved because the Executive Secretary of Puerto Rico has not issued the certificate of dissolution and therefore that the certificate has not been published, contending, furthermore, that the said certificate and its publication are necessary in order that Rubert Hermanos, Inc. be considered dissolved. Nevertheless, they have been consulted as to the action that the Executive Secretary should take with regard to the above-mentioned petition and they have not given the Executive Secre-

tary any opinion or advice. If the representatives of the Government understand that it is a prerequisite for the dissolution that the certificate of dissolution be issued and published, they should have given the necessary instructions to the Executive Secretary to act. As long as the office of the Executive Secretary does not receive an answer to its consultation it believes that it should not do anything. In other words, if the certificate is necessary—and we maintain it is not—the fact that it has not been issued can not be the fault of the officers or directors of the extinct corporation but is the fault of the representatives of petitioner who contend that a specific act should be taken or carried out and at the same time obstruct its being done.

VIII.

Rubert Hermanos, Inc. disposed of its properties and the representatives of petitioner have known this since the 29th of March, 1940.

The attorneys for The People of Puerto Rico, in their original brief, at page 8, say:

"The opposing gentlemen allege that the respondent has transferred its properties. And neither do they make any proof regarding this fact. On the contrary, the lis pendens appearing in the record was inscribed in the Registry of Property. We do not know the properties to which the opposing parties refer."

Let us see whether they did or did not know. On the 29th of March, 1940, the following letter was sent to the Attorney General of Puerto Rico:

"San Juan, P. R., March 29, 1940.

"Honorable Attorney General of Puerto Rico, San Juan, Puerto Rico.

"Sir: The judgment that was entered by the Honorable Supreme Court of Puerto Rico against Rubert Hermanos, Inc. has been affirmed by the Honorable Supreme Court of

the United States and the said Company has had to comply with said judgment. It has been liquidated, transferring its properties to a partnership composed of those who were its only stockholders and in effect the owners of its properties—a method that was deemed to be the only one available legally and economically, to effect the dissolution and liquidation and avoid serious and unnecessary prejudice to the stockholders.

Nevertheless, and although it is against the interest and desire of the interested parties, in view of the uncertainty and uneasiness through which the sugar industry is passing and the threats that are hanging over it for the future, the said partnership is willing, if the Government of the United States or The People of Puerto Rico desire to acquire the properties composing Central San Vicente, including the factory and all the lands, to sell the same under conditions that are legal, reasonable and just, inasmuch as we presume that the Government has not the intention or the purpose of sacrificing investments made in the best of good faith during a long period of years.

(signed) MANUEL GONZALEZ

ANA MARIA HERNANDEZ DE GONZALEZ

JOSE GONZALEZ

RAFAEL MARTINEZ DOMINGUEZ.

This letter was never answered.

We do not wish to comment.

As to the statement that we have made no proof of the fact that Rubert Hermanos, Inc. has disposed of its properties, we will limit ourselves to say that with reference to the incident regarding the appointment of a receiver the court only has before it the motion and the answer and that it has not been opened for the presentation of evidence. If the occasion or necessity arise to prove that Rubert Hermanos, Inc. disposed of its properties, as the Attorney General of Puerto Rico was opportunely advised,

and that Rubert Hermanos, Inc. is not the owner of any property, the necessary proof, which will be conclusive and definite, will be presented.

IX.

The liquidating trustees have capacity to oppose the appointment of a receiver.

We do not believe that the attorneys for petitioner seriously deny that the persons that appear in the opposition and answer to the motion for appointment of a receiver were directors of defendant corporation. This is a fact that appears from public records.

If what the attorneys for petitioner desire to allege is that those who were the directors of the extinct corporation are not its liquidators and have no right to appear as such in this proceeding, they should know that the law of corporations confers this right in its articles 28, 29, 31 and 32, which read as follows:

"Section 28.—*Directors as Trustees Pending Dissolution.*—Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, so far as such moneys and property shall suffice. They shall have power to meet and act under the by-laws of the corporation; and, under regulations to be made by a majority of the said trustees, to prescribe the terms and conditions of the sale of such property, or may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of the said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequently thereto, the surviving directors or director shall be the trustees or trustee thereof, as the case may be, with full power to settle the

affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this Act relative to the winding up of the affairs of such corporation and to the distribution of its assets.

"Section 29.—*Powers and Liabilities of Trustees in Liquidation.*—The directors constituted trustees as aforesaid shall have power to sue for and recover the aforesaid debts and property by the name of the corporation and shall be suable by the same name, or in their own names or individual capacities for the debts owing by such corporation, and shall be jointly and severally responsible for such debts to the amount of the money and property of the corporation which shall come to their hands or possession as such trustees."

"Section 31.—*Distribution of Assets by Trustees or Liquidators.*—The said trustees or liquidators shall pay ratably, so far as its assets shall enable them, all the creditors for the corporation who prove their debts in the manner directed by the court or by the law of civil procedure. If any balance remain after the payment of such debts and necessary expense, the same shall be distributed among the stockholders.

"Section 32.—*Pending Suits not Affected by Dissolution.*—Any suit now pending or hereafter to be begun against any corporation which may become dissolved before final judgment, shall not lapse by reason of such dissolution; but no judgment shall be entered in any such action except upon notice to the trustees or liquidators of the corporation."

Identical or similar statutory provisions have been interpreted and applied repeatedly by the courts. The right of the directors, in their character of liquidators, to appear in suits affecting the corporation, whether as plaintiffs or as defendants, under statutes of this nature, is well established.

"In many states statutes have been enacted designating the directors of a dissolved corporation as its trustees or providing for the judicial appointment of trustees for the dissolved corporation. Such statutes do not impair the obligation of the contracts of creditors.

"The preponderance of authority in respect of such statutes is in favor of the doctrine that the general term 'dissolution' is applicable to dissolution produced by the forfeiture of corporate charters; but in some jurisdictions the position has been taken that only voluntary dissolutions are within the purview of the statutes in which this term is used without qualification." (13 Am. Jur. 2d 1202.)

"In some states it has been laid down that trustees of dissolved corporations are empowered to sue in the name of the defunct corporations.

"In most jurisdictions, however, the clauses by which their procedural capacity is defined have been construed as importing simply that in any action involving the claims or liabilities of a defunct corporation, the trustees are ordinarily the proper parties plaintiff or defendant." (13 Am. Jur., pages 1204, 1205.)

"Generally, the trustees of a defunct corporation as such may sue and, conversely, suit may also be brought against them. In addition to their powers of maintaining and defending actions pending at the time of the dissolution, trustees have power to confess judgment on indebtedness which the corporation cannot pay." (19 C.J.S. pages 1518, 1519.)

General Ry. Signal Co. v. Cade et al., 106 N.Y.S. 729.

Attorneys for petitioner allege that there has been no proof presented to show that the parties opposing the motion for appointment of a receiver are as a matter of fact the liquidating trustees and as to this we should repeat that the court has nothing before it except the motion and answer and that neither party has presented proof because the court has not asked for it. If the

necessity should arise it will be very easy to show that the opposing parties are in fact trustees-liquidators of Rubert Hermanos, Inc.

X.

The jurisprudence cited by petitioner is inapplicable.

To sustain their contention that the Government may request the appointment of a receiver in quo warranto cases, the petitioner cites three decisions of the Supreme Court of Texas; *East Line Red River Co. v. State*, 12 S.W. 690, 696; *Texas Trunk R. Co. v. State ex rel.*, 18 S.W. 199; *San Antonio Gas Co. v. State*, 54 S.W. 289, 294.

These cases establish a minority doctrine. The general, the best doctrine, which is the majority doctrine, is that of *Haftmeyer v. Superior Court*, 84 Cal. 327, and that of other cases cited in our first brief.

"In proceeding by attorney general.—It has been held that, after forfeiture and cancellation of a corporation's charter by the state charter board for failure to make required reports, the state in a proceeding by the attorney general may sue for formal dissolution and to enforce a faithful settlement of the corporation's affairs; and in such suit the court may appoint a receiver. As a general rule, however, in the absence of statutory authority, a court has no jurisdiction to appoint a receiver on motion of the attorney general in quo warranto proceedings; and even where a statute does authorize appointment by the court of a receiver in quo warranto proceedings by the attorney general, but restricts its power of appointment to cases of dissolved corporations, the affairs of which have not been settled and adjusted it has been held that a court has no power under its provisions to make an appointment where the corporation had made an assignment before the proceedings in quo warranto had begun, and the assignee had entered on his duties, under direction of a court of competent jurisdiction.

Statutes authorizing a court to appoint a receiver in any action brought by a creditor, stockholder or member for the dissolution of a corporation, or upon the dissolution of any corporation, do not authorize such appointment in actions brought by the attorney general, or after a judgment has been entered against a corporation by the attorney general ousting it from usurping certain privileges and franchises not conferred upon it by its charter; nor is an appointment of a receiver pendente lite during the pendency of an appeal, in action by the attorney general, authorized by such statute; nor is this construction of the statute affected by other provisions of the statute authorizing the directors to take charge and administer as trustees, unless other persons are appointed by the court. On the other hand, a statute which directs the attorney general to institute actions for dissolution on certain grounds stated, and authorizes the court to appoint a receiver on judgments of involuntary dissolution, does not restrict the court's power of appointment to actions instituted by the attorney general." (19 C. J. S. sec. 1748, page 1524.)

"Where, under the rules stated supra sub-division (a) of this section, an application for a receiver is necessary, any individual having an interest may apply for the appointment of a receiver; and hence, application therefor may be made by a stockholder or a creditor, as parties interested, and statutes generally so provide. Although the contrary view has been taken, it has been held that where the charter has already been forfeited, the state has no interest in the subsequent winding up sufficient to sustain an application by it for a receiver." (19 C. J. S. sec. 1750, page 1526.)

"Who may apply for.—The persons who may apply for a receiver will depend upon the particular statute under which his appointment is authorized. Generally the statutes allow the application to be made by any creditor or stockholder.

"Whether a receiver may be appointed in a suit by the state to forfeit a charter, on the application of the state or otherwise, has been decided differently in various states, largely according to the particular wording of the governing statute, although sometimes without any reference thereto. In Indiana, the statute expressly authorizes the appointment of a receiver in such case. In a New York case it was held that when the charter of a corporation is forfeited in proceedings under a statute because of its suspension of business for a certain period, the judgment may properly include the appointment of a receiver, so in Texas, on forfeiture at the suit of the state, the statute authorizing the appointment of a receiver is construed as empowering the court to appoint a receiver without the application of any person interested in the property. On the other hand, where not provided for by statute, it has been held in Pennsylvania, Mississippi and Wisconsin that the court has no power to appoint a receiver for a corporation on motion of the state or commonwealth in quo warranto proceedings to forfeit its charter. In California, the governing statutes of that state after being exhaustively reviewed by the courts, are construed as not warranting the appointment of a receiver in connection with an action by the state to forfeit a charter, but only on the application of a stockholder or creditor. So it seems that, in California, if the suit is brought by the state to forfeit a charter, the court has no authority, on its own motion, to appoint a receiver." (8 Fletcher, page 9245, sec. 5660.)

We repeat what we have stated in our first brief, that the doctrine established by the Supreme Court of California has been established interpreting laws similar to our laws.

The Texas cases cited by our opponents furthermore are clearly inapplicable for the following reasons:

(a) In the three cases the defendant companies were public service companies. For that reason the court understood that a

receiver should be appointed in order that the properties could continue dedicated and applied to the public object or purpose for which the companies were organized.

(b) In the three cases in the petition or information of quo warranto the appointment of a receiver was requested as a part of the final judgment to be rendered by the court.

~~(c) In the three cases the appointment of a receiver was decreed in the final judgment sustaining the information.~~

(d) In the three cases the receiver would take possession of the properties subject to just claims that might be presented by any one having interest.

In this case the appointment of a receiver is requested for an entirely different purpose. That is, in order that the properties that according to the petitioner still belong to Rubert Hermanos, Inc., should pass not to those who have a right to them, but to the Government of Puerto Rico or third persons that might be interested in the purchase of the same at public auction and the appointment of a receiver is requested to maintain the status quo until the Government of Puerto Rico makes use of the option of confiscation or sale at public auction, it having been demonstrated that such option exists and that this proceeding was finally terminated when the judgment entered by this Honorable Court on the 30th of June, 1938, was affirmed.

CONCLUSION.

It is obvious that under no theory may an appointment of receiver be made in this case.

Wherefore it is respectfully prayed that this Honorable Court deny the motion for appointment of a receiver.

San Juan, P. R., July 15, 1940:

Respectfully submitted,

JAIME SIFRE, JR.,

HENRI BROWN,

Attorneys for Respondent, RUBERT HERMANOS, INC.

Notified with copy this fifteenth day of July, 1940.

GEORGE A. MALCOM,

Attorney General of Puerto Rico,

by MIGUEL GUERRA-MONDRAGON,

RAFAEL RIVERA-ZAYAS,

LUIS VENEGAS CORTES,

Associate Attorneys.

Government of Puerto Rico.

Office of the Executive Secretary.

San Juan, July 10, 1940.

Messrs Henri Brown and Jaime Sifre, Jr., San Juan, P. R.

Gentlemen: Receipt is acknowledged of your request dated on the 9th instant, for issuance of a certificate covering a document filed in this office by the stockholders of Rubert Hermanos, Inc.

We have prepared the certificate to the effect that on March 28, 1940, there was filed in this office a statement from the stockholders of Rubert Hermanos, Inc., giving consent to the dissolution of said corporation and requesting this office to take note of such dissolution, which document was duly accompanied by a certified copy of a decree of the Supreme Court dated July 30, 1938. The certificate which we are issuing quotes the petition from the stockholders.

We take this opportunity to advise you that the fees to cover the issuance of the certificate amount to \$1.20 in internal revenue stamps.

Please be advised that immediately upon receipt of the petition for dissolution this office took proper steps to obtain legal advice as to the course to be pursued and will terminate this matter as soon as we receive indications as to the correct procedure.

Respectfully,

E. D. BROWN,

Acting Executive Secretary.

The People of Puerto Rico.
Office of the Executive Secretary.

Know All Men By These Presents:

That in accordance with a request of Messrs. Henri Brown and Jaime Sifre, Jr., of San Juan, Puerto Rico, dated July 9, 1940, I, E. D. Brown, Acting Executive Secretary of Puerto Rico; do hereby certify: That from the records of this office it appears that "Rubert Hermanos, Incorporada" is a corporation organized under the laws of Puerto Rico and that the following is a true and correct transcript of a statement executed under oath by all the stockholders of said corporation, presented in this office on March 28, 1940, declaring that in compliance with the decree of the Supreme Court in the case of "*The People of Puerto Rico v. Rubert Hermanos, Inc.*" quo warranto, dated July 30, 1938, certified copy of which decree said stockholders submitted with said statement, they gave consent to the dissolution of said corporation and requested this office to take note of such dissolution:

"The undersigned, being all the stockholders of the corporation Rubert Hermanos, Inc., desiring to comply with the decree of the Supreme Court of Puerto Rico in case number 2, entitled "*The People of Puerto Rico vs. Rubert Hermanos, Inc.*" quo warranto, dated July 30, 1938, copy of which is attached, do hereby request the Executive Secretary of Puerto Rico to take note of the dissolution of said corporation.

"In testimony whereof we sign these present, this 27th day of March, 1940.

(s) M. GONZALEZ

(s) MANUEL GONZALEZ HERNANDEZ.

(s) RAMON GONZALEZ

(s) ANA MARIA H. DE GONZALEZ

(s) JOSE GONZALEZ

(s) RAFAEL MARTINEZ DOMINGUEZ

The People of Puerto Rico
Municipality of San Juan

Manuel Gonzalez Martinez, President, and Gabriel Soler, Secretary, of Rubert Hermanos, Inc., duly sworn declare that the foregoing petition for dissolution of said corporation has been signed by all the stockholders of the same.

(s) M. Gonzalez, President

(s) G. Soler, Secretary

Affidavit No. 2914.

Subscribed and sworn to before me this 27th day of March 1940 in the city of San Juan, P. R., by Manuel Gonzalez Martinez and Gabriel Soler.

(s) Raul Benedicto,
Notary Public.

(NOTARIAL SEAL)

(25¢ internal revenue stamp cancelled.)

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Puerto Rico at the City of San Juan, this tenth day of July, A.D., nineteen hundred and forty.

E. D. BROWN,

Acting Executive Secretary.

[Title omitted.]

OPINION OF THE COURT

BY ASSOCIATE JUSTICE MR. TRAVIESO.

San Juan, Puerto Rico, July 26, 1940.

By decree entered on July 30, 1938 by this Supreme Court (53 DPR 779), affirmed by the Supreme Court of the United States on March 25, 1940, the forfeiture and cancellation of the license and of the Articles of Incorporation of the defendant Rubert Hermanos, Inc. was decreed and at the same time the immediate dissolution of said corporation and the liquidation of its affairs was ordered.

Complainant now requests the appointment of a receiver under whose direction and control this court should effectuate the liquidation of said defendant corporation.

In the opposition to the appointment of a receiver, the liquidating trustees of the defendant corporation alleged: That the judgment has been complied with, the corporation having been dissolved, its obligations extinguished and its properties transferred by consent of its stockholders and liquidators; that this court is without jurisdiction to appoint a receiver, because the quo warranto law grants no authority for that; that the motion is insufficient and does not state facts justifying the appointment of a receiver; that the appointment of a receiver would deprive those who were the stockholders of the corporation of their rights and properties without due process of law; and finally, that the appointment of a receiver would constitute legislation by the court and violate the prohibition of the Organic Law of Puerto Rico against *ex post facto* laws.

The first question which we should consider and decide is that relating to the alleged lack of jurisdiction by this Supreme Court to appoint a receiver with powers to liquidate the business of the corporation which was decreed by judgment of this same court.

It is beyond all argument that this Supreme Court, when it entered judgment decreeing the forfeiture and cancellation of the license and the articles of incorporation of the defendant and ordering its dissolution and liquidation, acted within the jurisdiction expressly conferred by Law No. 47 of August 7, 1935. It was so held by the Federal Supreme Court in affirming the said decree and in returning the said case to this Supreme Court for further proceedings. We do not believe that it can be sustained with probabilities of success, that a court of justice with jurisdiction to enter a judgment does not have jurisdiction to order, intervene in and direct its enforcement. It would be anomalous if this court, after having found defendant guilty of having violated the Organic Law, the Corporation Law and its own articles of incorporation, and after having imposed the payment of a fine, and decreed the

forfeiture of its articles of incorporation and the dissolution and liquidation, should find itself obligated, for lack of jurisdiction, to cross its arms, leaving the stockholders and directors of such defendant, the real guilty parties of such violations, in complete freedom of action to comply with the decree of this court as and when they might wish. We are of the opinion that the authority granted to this Supreme Court to entertain these proceedings of quo warranto and to enter a judgment as that rendered in the present case, impliedly carries with it the power to compel the compliance with the said judgment through the appointment of a receiver.

Article 182 of the Code of Civil Procedure authorizes the appointment of a receiver by the court in which an action may be pending or which may have been decided. And paragraph 4 of the same article provides that a receiver may be appointed in cases in which a corporation has been dissolved or which may be insolvent or in imminent danger of insolvency *or which has lost its rights as such corporation.*

The quo warranto proceedings did not terminate when the judgment was affirmed by the Federal Supreme Court. This court retained its jurisdiction over the defendant corporation and over its properties to compel compliance with the judgment and until the judgment rendered by it has been complied with. We are not dealing in this case with a voluntary dissolution agreed upon by the stockholders, but of a case in which the corporation has lost all its rights as such by judicial decree.

There is another fundamental reason for this court to retain its jurisdiction over the properties which the defendant corporation possessed in violation of the law and of its articles of incorporation. Law No. 47 of August 7, 1935, by its section 2, second paragraph, grants to The People of Puerto Rico an option to institute within the same proceedings of *quo warranto* the confiscation in its favor or the sale at public auction, of the properties illegally possessed by the extinct corporation, within a term of six months counted from the date on which such judgment becomes final

and such term does not expire until the 13th of November, 1940. If the so-called *liquidating trustees* should be permitted to perform by themselves the liquidation of the business and the conveyance of the properties of the extinct corporation, without the intervention and supervision of this court, the fundamental object of the law and the public policy which motivated the institution of these proceedings would be defeated and The People of Puerto Rico dispossessed of its option by the simple transfer of the properties to another person.

The opposition of the liquidating trustees based on the fact that the judgment of this court has already been complied with, the obligations of the corporation satisfied and its properties sold, because it was so agreed by them and the stockholders cannot be taken into consideration, first, because said liquidating trustees have not proved in any manner their capacity and personality nor have they offered any evidence to substantiate their allegations, an opposition not even having been sworn to; and second, because in our judgment all said acts done after the date of the judgment which ended the legal existence of the defendant corporation are legally void.

When a corporation is dissolved by a valid judgment declaring the forfeiture of its charter, from that moment on it ceases to exist for all purposes, unless there is some statutory provision continuing its existence, and it is without any power to contract or to acquire, possess or transfer properties, or to sue or to be sued, or to exercise any other franchise or powers granted by its articles of incorporation. See: *Greenwood v. Union Freight R. Co.*, 105 U.S. 13, 26 L. Ed. 961; *Thornton v. Marginal Freight R. Co.*, 123 Mass. 32; *Bradley v. Reppell*, 133 Mo. 545, 54 Am. St. Rep. 685; *Fletcher Cyc. of Corporations*, Vol. 8, sec. 5564.

Our attention has not been called to any statute of Puerto Rico providing that a corporation which has ceased to exist by virtue of a judicial judgment continues having legal existence to liquidate its affairs and sell its property without the intervention or permission of the court. The provisions of our corporation law

(Section VI, arts. 27 and 28) are applicable only to a voluntary dissolution agreed upon by the shareholders of a corporation or by expiration of the term fixed for its duration.

Once the dissolution of a corporation has been decreed it may not accept nor make a transfer of properties unless there should be a statute extending its corporate existence for the purposes of its liquidation. It has been decided in Louisiana that when a court has acquired jurisdiction over all the property of a corporation from the date on which the estate commences an action for the cancellation of the charter, the property, once that the litigation has started, may not be taken over by liquidators appointed subsequent thereto in relation with the voluntary dissolution. *State v. People's Fire Ins. Co. of New Orleans*, 126 La. 548, 52 So. 763.

The present case is not an ordinary case of dissolution of a corporation because of violation of the provisions of its articles of incorporation. As was said by the Federal Supreme Court in its opinion affirming the judgment of this court, "the question here in controversy is a matter of great importance to Puerto Rico and involves the power of its Legislature to enforce Congressional policies affecting the island". This is a case of an agricultural corporation, which in violation of its charter, of the Corporation Law and of the Organic Act got to control about 12,188 acres of lands fit for the cultivation of sugar cane. Taking into account the public policy of the National Congress and the interest of the insular community in the dissolution of such large concentrations of arable lands in the hands of corporations and of fomenting the creation of the greater number of owners of small parcels of land, the insular Legislature granted to The People of Puerto Rico the option of acquiring for itself, through the corresponding indemnity, or of forcing the sale at public auction of the lands illegally possessed by a corporation dissolved through a judicial decree.

The decree of dissolution can not be complied with by the extinct corporation or by its liquidators through the disposition of

the properties, until such time as the option granted to The People of Puerto Rico shall have expired. The receivership is without any doubt the most adequate remedy for the protection of the public interest of the shareholders and of the creditors, should there be any.

In *San Antonio Gas Co. v. State*, 54 S. W. 289, 293-294, it was said:

"To whom shall the property of the defunct corporation be intrusted, if no receiver be appointed? Appellant answers, to the president and board of directors of the defunct corporation. Article 682, Sayles' Rev. Civ. St., is the only statute that provides that the president and board of directors shall be trustees and take possession of the property of the corporation, and such provision is made only in cases of the dissolution of a corporation. *That the statute draws a distinction between a dissolution and the forfeiture of a charter is shown by the language of section 3, art. 1465, Id.,* where provision is made for a receiver in case of dissolution, insolvency, or forfeiture. When a charter is forfeited, the life of the corporation ceases, and no president and board of directors can survive it, and, unless specially authorized by statute, could not, by virtue of their offices, take control of the property of the corporation. If article 682 could apply to cases in which there has been a forfeiture of a charter by the state, it can only apply when no receiver has been appointed by some court of competent authority. If it be necessary to justify the power given by statute, it may be well to remember that appellant in this case is a quasi public corporation, and for the protection of the public interests it was necessary that a receiver should be appointed. To place the property again in the hands of the officers of the corporation would be to return it to the custody of those who had failed to perform their trust, and had violated the laws of the state, and the public interests would not be subserved.

thereby. We call attention, in this connection, to *People v. Ice Co.*, 18 Abb. Prac. 382, and *Herring v. Railroad Co.* 105 N.Y. 340; 12 N.E. 763.

"That the appointment of a receiver will have the effect of a fine inflicted upon the shareholders in the defunct corporation can have no weight in the decision of a court. The statute plainly confides the authority to the court to make the appointment, and that it will bear heavily upon the shareholders is a matter for legislative, and not judicial, consideration. In this case, at least, the violators of the law will be the ones who will suffer from the appointment of a receiver. We have treated the question of a receivership as though it was an open one in Texas, but it is not. The statute has been construed by the supreme court, and it was held that the trial court, when a charter is forfeited, has the authority, under the statute, to appoint a receiver at the instance of the state, independent of the request of a creditor."

See: *Conlan v. Oudin*, 94 P. 1074; *Herring v. New York & W. R. Co.*, 12 N.E. 763, 781; *State v. Municipal Saving & Loan Co.*, 14 N.E. 736; *Eel River Co., etc.*, 57 N.E. 388; 14 A.C.J. 1140, sec. 3777.

Our attention has been called to the case of *Havemeyer v. Superior Court*, 84 Cal. 327, 24 Pac. 121, in which it was decided that in the case of the forfeiture and cancellation of the franchise of a corporation, a receiver may only be appointed at the request of an interested party. The said case does not help in any way the contention of the opposers. In the first place, we have already stated that The People of Puerto Rico is an interested party in the appointment of a receiver, for the protection of the right granted by section 2 Par. 2, of the Quo Warranto Law. Our statute (art. 182 C. of Civ. Pro.) grants us the discretionary power to appoint a receiver when the forfeiture of a corporation is decreed, without the necessity of the filing of any petition by any interested party in the corporate property. In this case, we repeat,

a petition has been presented by an interested party in the future holding of lands illegally possessed by the defunct corporation.

For the stated reasons the motion of complainant should be granted.

MARTIN TRAVIESO,

Associate Justice.

[Title omitted.]

ORDER.

San Juan, Puerto Rico, July 26, 1940.

(By the court at the proposal of Associate Justice Mr. Travieso.)

The motion of The People of Puerto Rico for the appointment of a receiver who in complying with the decree of this court should proceed to liquidate the business of the extinct defendant corporation having been heard; and the parties hereto having argued for and against said motion;

For the reasons stated and the jurisprudence cited in the opinion of this date, the complainant's motion is granted and Mr. Jaime Annexy Iglesias, engineer and a resident of San Juan, is hereby appointed receiver for the extinct defendant corporation with all the authority and powers inherent to the same, and especially the following:

1. To take and maintain possession of all the properties and especially of the lands which in violation of the law were possessed by the corporation Rubert Hermanos, Inc.; to continue managing said properties and cultivating the lands in the same manner as has been done heretofore by the directors and officers of the said corporation, maintaining the buildings, factory and machinery in good state of conservation and operation and fomenting and cultivating the plantations with the object that they shall produce the greatest yield for the benefit of the creditors and stockholders of said corporation;
2. To employ, compensate and dismiss from time to time and in his discretion, all workmen, servants, agents and attorneys as

may be necessary; purchase and pay for materials and accessories needed; settle with creditors all claims in the ordinary course of business; pay all taxes on the properties which may be due or may become due during his administration; to initiate and defend without the necessity of an ulterior order of the court, all pending actions in pro or against said corporation; defend all actions which in the future might be established against said corporation or against him as such receiver, with leave of this court, and pay the expenses of said actions and defenses; file and proceed with all actions in law or in equity or extraordinary proceedings which might be necessary for the purpose of obtaining the possession and control of any property of the defendant corporation; to do all that may be necessary and adequate to maintain and preserve the business established by the defendant corporation until subsequent order of this court or of the Judge who may act in its representation during the period of its vacation, and to pay the sums for such purpose which might in the future be ordered by this court or by the Acting Judge at the request of said receiver and after he has been heard; give all security which might be necessary to secure loans of funds in interest of the trust confided to said receiver by these presents;

3. As soon as said receiver shall have entered in the compliance of his duties, he shall make a true and complete inventory of each and all the properties and other belongings movable or immovable of every class and description of which he has been appointed receiver, or which might come into his possession, and shall file said inventory with the clerk of this court after having notified the attorneys for both sides. Said receiver shall keep true and exact accounts of each and all of his acts and transactions respecting the receivership; and shall file in the office of the clerk such accounts at the end of the receivership, serving copy thereof to the attorneys for both parties;

4. All moneys coming into the hands of said receiver as such shall be deposited by him in his name in one or more banks of deposit in the Island of Puerto Rico with the approval of this

court or of the Judge of same, who may be acting during vacation, against which deposits the said receiver shall have the right to draw by his personal order or by order of his agents or attorneys;

5. If the said receiver should use due prudence and diligence in their selection, he shall not be responsible for the illegal acts of his servants and agents;

6. The said receiver shall not incur in any personal responsibility for the management of the business of the receivership by reason of any act of his as such receiver or the acts of his servants, agents or attorneys, provided that said receiver acts in good faith and in the exercise of his best discretion and prudence;

7. The receiver appointed by these presents is expressly authorized, should The People of Puerto Rico in the exercise of its right specifically granted by sec. 2, Par. Second of Act No. 17 of August 7, 1935, urge the confiscation in its favor of the immovable property illegally possessed by said corporation, to convey said property to The People of Puerto Rico upon the payment by it of the indemnization which might be fixed in the form established in the Law of Eminent Domain; and should The People of Puerto Rico request in accordance with said law the sale at public auction of the said properties, to proceed, in accordance with the plan which shall be submitted to the previous approval of this court or of the judge acting in the name of this court during its vacation, to sell said properties at public auction;

8. The said receiver, before taking possession of his charge and assuming the compliance of his duties, shall make an oath that he shall faithfully comply with all his duties and shall give a bond to be approved as to form and sufficiency by the preceding judge or by the judge of this court who shall act during the vacation, and which bond shall be filed in the office of the clerk of this court in the amount of thirty thousand dollars (\$30,000) to guarantee the faithful compliance of his duties as such receiver.

It is further ordered and by these presents the Defendant corporation is required, as well as all persons acting in its name or who may derive from it their right as directors, officers, stock-

holders, agents, employees, trustees, liquidators, assignees, lessees or in any other capacity, to, upon presentation of a certified copy of this resolution, deliver and put at the disposal of the receiver herein appointed, any and all the properties of the defendant corporation which might be in their possession or under their control.

It is further ordered that said defendant, its directors, officers and agents, and all those persons, partnerships, or corporations claiming any right by reason of the assignment, or transfer made by the defendant corporation or by its representatives or trustees subsequent to the date on which the judgment by which the forfeiture and cancellation of the license and Articles of Incorporation of Rubert Hermanos, Inc., the dissolution of said corporation and the liquidation of its affairs was decreed, refrain from disposing of conveying or selling in any manner movable or immovable property of which they might be in possession or which they may have under their control, and from interfering with or obstructing the receiver or impeding him in any form from taking possession of the said properties of said corporation.

It has been so decided by this court and the Presiding Justice signs. The Associate Justice, Mr. de Jesus did not intervene. The Associate Justice Mr. Wolf agrees with the finding.

EMILIO DEL TORO,

Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Same title.]

EXCEPTION TO THE RESOLUTION AND ORDER OF
JULY 26, 1940.

[Filed July 30, 1940.]

Now come Rubert Hermanos, Inc., respondent in the above-entitled case, and Manuel Gonzalez Martinez, Rafael Martinez Dominguez, Jose Gonzalez Hernandez, Aureo Garcia and Gabriel Soler, trustees-liquidators of the aforesaid respondent corporation,

by their undersigned attorneys, and respectfully take exception to the resolution and order appointing a receiver, rendered and entered in the above cause on July 26, 1940.

San Juan, Puerto Rico, July 30, 1940.

HENRI BROWN,
JAIME SIFRE, Jr.,

*Attorneys for RUBERT HERMANOS, INC.,
and for MANUEL GONZALEZ MARTINEZ, RAFAEL MARTINEZ DOMINGUEZ, JOSE GONZALEZ HERNANDEZ, AUREO GARCIA and GABRIEL SOLER, Trustees-Liquidators of said Corporation.*

[Title omitted.]

ASSIGNMENT OF ERRORS.

[Filed July 30, 1940.]

Now come Rubert Hermanos Inc. defendant in the above-entitled proceeding and Manuel Gonzalez Martinez, Rafael Martinez Dominguez, Jose Gonzalez Hernandez, Aureo Garcia y Gabriel Soler, trustees in liquidation of said defendant corporation Rubert Hermanos Inc. and respectfully submit that in the record, proceedings and resolution, decision and order of the Supreme Court of Puerto Rico entered on July 26, 1940 there is manifest error and filed the following assignments of error upon which they will rely in the prosecution of the appeal herewith petitioned for in said cause:

1. The court erred in holding that the motion for the appointment of a receiver was sufficient to call into exercise judicial discretion or stated grounds upon which the discretion of the court could be exercised.

2. The court erred in holding and deciding that sub-section 4 of section 182 of the Code of Civil Procedure of Puerto Rico makes mandatory rather than discretionary the appointment of a

receiver in all cases in which a corporation has been dissolved or has forfeited its corporate rights.

3. The court erred in holding that it had jurisdiction to make and enter an order appointing a receiver of the properties of defendant corporation in the same suit or proceeding after final judgment therein.

4. The court erred in holding that the suit or proceeding in which the said decision and order is made and entered is still pending after final judgment entered therein.

5. The court erred in holding that sub-sections 4 and 5 of section 182 of the Code of Civil Procedure confer authority and jurisdiction to appoint a receiver of the property of a defendant or respondent in a quo warranto proceeding on the petition of The People of Puerto Rico by its Attorney General, and after final judgment of forfeiture and dissolution.

6. The court erred in holding that it had jurisdiction to make the order and decision appealed from which modifies and changes the judgment entered therein, on July 30, 1938, after the said judgment became final and the said suit or proceeding was no longer pending in the said court.

7. The court erred in holding that the cause or proceeding of quo warranto was still pending after the judgment of July 30, 1938 became final and that it had power to make and enter further or additional judgments, decrees, orders or decisions finally determining property rights not dealt with in the said judgment of July 30, 1938.

8. The court erred in declining and refusing to follow the rule of law regarding the pendency of actions fixed by section 348 of the Code of Civil Procedure of Puerto Rico.

9. The court erred in imposing in and by its said order and decision the penalties of confiscation or sale at public auction of the properties of the defendant corporation, provided in and by sections 1 and 2 of Act No. 47 of the Legislature of Puerto Rico enacted at Special Session of the 13th Legislature in 1935, and approved August 7, 1935, when such penalties were not prayed for

nor allegations necessary for the imposition of such penalties made in the amended information and the final judgment in the said cause or proceeding did not decree the imposition of such penalties.

10. The court erred in holding that the directors of defendant corporation are not statutory trustees in liquidation of the said corporation after the final judgment forfeiting its charter and ordering its immediate dissolution, under and by virtue of the provisions of sections 28 and 29 and 31 of an act of the Legislature of Puerto Rico entitled "An Act to establish a law of private corporations" approved March 9, 1911.

11. The court erred in holding and deciding that the provisions of sections 27 and 28 of an "Act to establish private corporations" approved March 9, 1911, are applicable only to voluntary dissolutions of corporations by agreement of the stockholders or by the expiration of the term fixed for the duration of a corporation in its articles of incorporation.

12. The court erred in holding and deciding that section 1 of Act No. 47 approved August 7, 1935, construed in connection with the provisions of section 2 of the same act relating to confiscation or sale of properties of corporations whose charters are forfeited and dissolution ordered by a judgment in a quo warranto proceeding or suit fixes a term of six months after such final judgment within which The People of Puerto Rico may elect either to confiscate such properties or have them sold at public auction, instead of holding that the said term of six months is the period within which a sale of such properties decreed in the final judgment must be had.

13. The court erred in holding and deciding that after the initiation of a quo warranto suit or proceeding the defendant corporation is without power to dispose of or alienate its properties.

14. The court erred in holding and deciding that it had power to appoint a receiver of properties owned by defendant corporation in the beginning of the said proceeding or suit subsequently transferred to a civil partnership not a party to the suit and in the

possession of said partnership under claim of title and to order the receiver so appointed to take possession of such properties without hearing ~~for~~ giving an opportunity to such partnership to be heard.

15. The court erred in holding and deciding that its order or decision directing its receiver to take possession of property owned by and in possession of a grantee and transferee of said properties, not a party to the suit, without hearing, does not deprive the said partnership of due process of law in conflict with the provisions of the Organic Act of Puerto Rico.

16. The court erred in declining and refusing to hold that the penalties of confiscation or sale fixed in sections 1 and 2 of Act No. 47 approved August 7, 1935 constitute ex post facto laws in violation of the Organic Law of Puerto Rico.

17. The court erred in declining and refusing to hold that the penalties of confiscation or sale at public auction of properties of defendants in quo warranto provided by Act No. 47 approved March 9, 1935, are not retroactive as to corporations in existence prior to the passage of the said Act and properties acquired prior thereto.

18. The court erred in decreeing and ordering the appointment of a receiver to take possession and dispose of the properties of defendant corporation and its grantee as a punishment for the misconduct for which its charter is forfeited by the final judgment and in refusing to hold that such an order usurps legislative powers and furthermore violates the provisions of the Organic Act of Puerto Rico prohibiting ex post facto laws.

19. The court erred in holding and deciding that the quo warranto law of Puerto Rico or the Code of Civil Procedure of Puerto Rico authorize the appointment of a receiver as a punishment for misconduct of corporations giving rise to a decree or judgment of forfeiture and dissolution in quo warranto proceedings.

20. The court erred in holding that it had jurisdiction after a final decree forfeiting the charter of defendant corporation and

ordering its immediate dissolution and liquidation to appoint a receiver, to continue to operate the properties and business of the dissolved corporation for an indefinite period.

21. ~~The court erred in holding and deciding that it had jurisdiction to authorize and empower a receiver appointed after the judgment of forfeiture and dissolution of defendant corporation to borrow money secured by liens on the property of the corporation for the purpose of operating the properties and carrying on the business of the defendant corporation.~~

22. The Supreme Court of Puerto Rico erred in entering the resolution or order of July 26, 1940.

23. For other errors appearing in the record.

By reason whereof appellants pray that the decision and order appealed from be reversed and set aside.

San Juan, Puerto Rico, July 30, 1940.

HENRI BROWN,

J. SIFRE, JR.,

Attorneys for Appellant.

[Title omitted.]

[Filed July 30, 1940.]

ISLAND OF PUERTO RICO,

DISTRICT OF SAN JUAN, SS.

Jose Gonzalez Hernandez, having been duly sworn, deposes and says:

I was vice-president and a director of the defendant corporation Rubert Hermanos, Inc., and am one of its trustees in liquidation. I have personal knowledge of the properties and business of the corporation; the fair value of the properties that belonged to said defendant corporation and of which the receiver appointed by this court is directed to take possession is in excess of \$2,000,000.

The taking over of the said properties by the receiver and their operation for an indefinite period of time for the purposes stated

in the said order will occasion a loss in value of the said properties in excess of the sum of \$300,000.

San Juan, P. R. July 30, 1940.

JOSE GONZALEZ HERNANDEZ.

Subscribed and sworn to before me in the city of San Juan, Puerto Rico, this thirtieth day of July, 1940, by Mr. Jose Gonzalez Hernandez, of age, property-owner, resident of San Juan, to me personally known.

B. MARRERO RIOS,
Assistant Clerk, Supreme Court of Puerto Rico.

[Same title.]

ORDER.

San Juan, Puerto Rico, July 31, 1940.

The exception taken by Rubert Hermanos, Inc., et als. to the resolution and order of this court of July 26, 1940, with regard to the appointment of a receiver, is hereby allowed. Let the document filed to that end be added to the record of this case.

It was so decreed as witness the signature of the Honorable Martin Trayieso, Associate Justice in vacation:

MARTIN TRAYIESO,
Associate Justice in vacation.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Title omitted.]

ADDITIONAL ASSIGNMENT OF ERRORS.

[Filed August 5, 1940.]

Now come Rubert Hermanos, Inc., defendant in the above-entitled cause, and Manuel Gonzalez Martinez, Rafael Martinez Dominguez, Jose Gonzalez Hernandez, Aureo Garcia and Gabriel Soler, trustees in liquidation of said defendant corporation Rubert Hermanos, Inc., by their undersigned attorneys, and respectfully file

herewith the following additional assignments of error in connection with their petition for appeal filed herewith on or about the 30th of July, 1940 and pending allowance:

24. The court erred in holding that all acts realized by the defendant corporation or its trustees in liquidation after the judgment of July 30, 1938 are null and void.

25. The court erred in holding that the defendant corporation was without power or right to do whatever was necessary to comply with the order addressed and directed to the said defendant in the final judgment and that such order requiring immediate dissolution and liquidation could only be carried out and complied with by a receiver appointed by the court.

San Juan, P. R., July, 30, 1940.

HENRI BROWN,

J. SIERE JR.,

Attorneys for Appellant.

[MEMORANDUM: Petition for appeal, filed July 30, 1940; order allowing appeal, August 9, 1940; citation, dated August 10, 1940, returnable in sixty days; bond in the sum of \$30,300, Manuel Gonzalez Martinez, et al., Trustees, as surety; and order approving bond, August 29, 1940, are here omitted. A. I. CHARRON, Clerk.]

[Title omitted.]

STIPULATION AS TO RECORD ON APPEAL.

Received September 24, 1940.

Now come the parties hereto and stipulate that the transcript of the record on appeal shall consist of the following documents, which shall be printed, to wit:

1936

1. Feb. 28, Amended information filed by The People of Puerto Rico.

1937

2. Aug. 19, Defendant's answer to the amended information.

1938

3. July 30, Judgment of the Supreme Court of Puerto Rico.
4. July 30, Motion by The People of Puerto Rico praying for the appointment of a receiver.
5. Nov. 9, Order regarding the above motion.

1940

6. Mar. 28, Written statement by defendant depositing with the clerk of the Supreme Court of Puerto Rico \$6,000 to cover fine, attorneys' fees and costs.
7. Mar. 30, Order of the Supreme Court of Puerto Rico with reference to the above.
8. May 13, Motion by The People of Puerto Rico asking that the motion for the appointment of a receiver be set for hearing.
9. May 23, Order of the Supreme Court of Puerto Rico regarding payment of the fine, attorneys' fees and costs.
10. June 4, Order setting for hearing the motion for the appointment of a receiver.
11. June 24, Answer and opposition to the motion praying for the appointment of a receiver.
12. June 24, Journal entry.
13. July 5, July 15, July 16, Complete original and reply briefs filed by the parties with reference to the motion regarding the appointment of a receiver.
14. July 26, Opinion of the Supreme Court of Puerto Rico regarding motion for the appointment of a receiver.
15. July 26, Order of the Supreme Court of Puerto Rico appointing receiver.
16. July 30, Exception noted to the above order.
17. July 30, Petition for appeal.
18. July 30, Assignment of errors.
19. July 30, Affidavit of Jose Gonzalez Hernandez.
20. July 31, Order of the Supreme Court of Puerto Rico regarding the exception taken to the order appointing receiver.

Translator's Certificate.

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- 21. Aug. 5, Additional assignment of errors.
- 22. Aug. 9, Order allowing appeal and fixing amount of super-sedeas and cost bond.
- 23. Reference to citation and service of same.
- 24. Aug. 19, Appeal bond.
- 25. Aug. 29, Order approving bond.
- 26. This stipulation.
- 27. Sept. Translator's certificate.
- 28. Sept. Certificate of secretary-reporter of the Supreme Court of Puerto Rico as to the correctness of the record.

San Juan, Puerto Rico, September 21, 1940.

HENRI BROWN,

by J. S. Jr.,

J. SIFRE, Jr.,

Attorneys for Appellant.

GEORGE A. MALCOLM,

MIGUEL GUERRA-MONDRAGON,

Attorneys for Appellee.

[Title omitted.]

TRANSLATOR'S CERTIFICATE.

I, B. Marrero Rios, official interpreter and translator of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing is a true and faithful translation of their respective originals as the same appear from the original record of this case on file in this office.

In testimony whereof, I have signed this certificate in the City of San Juan, Puerto Rico, this eighteenth day of September, 1940.

B. MARRERO RIOS,

*Official Interpreter and Translator of
the Supreme Court of Puerto Rico.*

[Title omitted.]

CLERK'S CERTIFICATE.

I, B. Marrero Rios, acting secretary-reporter of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above-entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in this transcript by the appellant, according to the order of the court.


I further certify that the translation of said papers and proceedings has been revised by me as official translator of this court, as shown by my certificate attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, in the City of San Juan, Puerto Rico, this twenty-seventh day of September, 1940.

B. MARRERO RIOS, 

*Acting Secretary-Reporter of the
Supreme Court of Puerto Rico.*

[\$126.50 Internal Revenue stamps cancelled.]



[fol. 141] PROCEEDINGS IN CIRCUIT COURT OF APPEALS

On October 24, 1940, the following Statement on Appeal was filed by appellants:

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

RUBERT HERMANOS, INC., Defendant-Appellant,

v.

THE PEOPLE OF PUERTO RICO, Plaintiff-Appellee

STATEMENT ON APPEAL

This appeal comes to this Court by permission of the Supreme Court of Puerto Rico duly granted on the 9th day of August, 1940 (Typewritten Record on Appeal, p. 222).

The defendants appeal from an order or decree entered in the above entitled proceeding in July 26, 1940 which order or decree

appointed a Receiver of all the properties formerly owned by defendant;

purported to vest title in the Receiver to all of defendant's property both real and personal;

directed the Receiver to take possession of all of defendant's property whether in possession of defendant or its transferees;

directed the defendant corporation and its directors, officers, stockholders, agents, employees, trustees, liquidators, assignees, lessees, to deliver and turn over to the Receiver all properties of the defendant corporation in their possession or under their control;

authorized and directed the Receiver to continue the business and to operate the business to which the properties of the defendant were devoted;

authorized the Receiver, to transfer title to the defendant's properties at such time as the People of Puerto Rico should elect to either confiscate or sell at public sale;

[fol. 142] and authorized the Receiver to create liens against defendant's properties by obtaining loans against said properties.

First. The appellant contends there are substantial Federal questions involved on this appeal.

Second. It is contended that this court has jurisdiction because the appeal is taken from a final decision in a civil case wherein the value in controversy exceeds \$5,000.00.

Third. That the interpretation by the Supreme Court of Puerto Rico of the local laws involved is patently wrong and clearly erroneous.

(a)

The Statutory Provision Which Sustains the Jurisdiction of This Court to Review by Appeal the Decree or Order of the Supreme Court of Puerto Rico

The statutory provision vesting jurisdiction in this Court is found in Title 28, Judicial Code, Section 225 which provides in part as follows:

“(a) Review of Final Decisions.—The Circuit Court of Appeals shall have appellate jurisdiction to review by appeal or writ of error final decisions—

Fourth. In the Supreme Courts of the Territory of Hawaii and of Puerto Rico, in all cases, civil or criminal, wherein the Constitution or a statute or treaty of the United States or any authority exercised thereunder is involved; in all other civil cases wherein the value in controversy, exclusive of interest and costs, exceeds \$5,000—and in all habeas corpus proceedings.”

The order or decree appointing a Receiver in this action is a final decision. In *Farmers Loan and Trust Co.*, 129 U. S. 206 it was decided that an order of the Circuit Court, entered after a final decree, authorizing a Receiver to borrow money was a final decision from which an appeal could be taken to the Supreme Court. In *Texas Co. v. International G. N. Ry. Co.*, 237 Fed. 921, it was held that an order authorizing a Receiver to issue certificates to secure loans entered after a final judgment was an appealable order.

The order or decree appealed from here appoints a Receiver, vests title to property in him, and authorizes him to convey title and to create liens by borrowing money against the said properties.

City of Eau Claire v. Payson, 107 Fed. 552, 557:

"The Supreme Court has not placed upon the words 'final decree', respecting the right of appeal, a strict and technical sense, but has given them a liberal and reasonable construction."

Brush Electric Co. v. Electric Imp. Co., 51 Fed. 557:

"A new question arising in the trial court in proceedings subsequent to the mandate of an appellate court and not included therein may be the subject of another appeal."

Gay v. Hudson River Elec. Power Co., 184 Fed. 689, 690;

Odell v. Batterman, 223 Fed. 292;

Amer. Brake Shoe & Foundry Co. v. N. Y. Rys. Co., 282 Fed. 523;

Laidlaw v. Oregon Ry. & Nav., 81 Fed. 876;

Lyons v. Empire Fuel, 270 U. S. 930;

Clark v. Willard, 292 U. S. 112.

1

Substantial Federal Questions Involved on This Appeal

It is contended by the appellants that the penalties and forfeiture of land created by Act No. 47 convert the Act into an Ex Post Facto Law in violation of Section 2 of the Organic Act of Puerto Rico.

[fol. 144] Appellant at all stages of this case, has contended that the penalty provisions of Act No. 47 (annulment of contracts, cancellation of entries in public registries, confiscation or forced sale at auction of real [immovable] property) are ex post-facto laws and therefore violative of the Organic Act prohibitive of legislation of this character. The trial court (the Supreme Court of Puerto Rico) as well as this Court, on appeal from the judgment and the Supreme Court of the United States have, in reviewing the judgment of this Court on certiorari, all found it unnecessary to pass upon this contention because none of these penalties has either been prayed for in the amended information or decreed by the trial court in the final judgment.

For the first time this question is before this Court for consideration on appeal.

The defendant corporation was organized in 1927 and prior to 1935 had acquired title to more than 500 acres of land in violation of the Joint Resolution of Congress of

May 1, 1900. The Joint Resolution provided no penalties in the event of its violation. Thirty-five years passed prior to the enactment of any penalties. In 1935 Act No. 47 of the Local Legislature was enacted amending Section 6 of the Quo Warranto Act so as to read as follows:

"Whenever in the opinion of the Court it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall decree the dissolution of the defendant entity if it be a domestic corporation, the prohibition to continue doing business in the country if a foreign corporation, the nullity of acts done and contracts made by the defendant corporation or entity, and in addition, the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico shall be decreed; and when a decree of nullity affects real property and the People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings. * * *

The 1935 Act thus clearly

1—provides for the loss of the corporate franchise and dissolution of the corporation;

2—forfeiture of real property;

3—nullification and impairment of existing contracts.

In a quo warranto proceeding a judgment was entered on July 30, 1938 in the Supreme Court of Puerto Rico which adjudged and decreed that the defendant corporation was engaged in agriculture and was guilty of owning and controlling 12,188 acres of land in violation of the provisions of a Joint resolution of the Congress of the United States, of Section 39 of the Organic Law of Puerto Rico and of its own articles of incorporation by all of which provisions the defendant corporation was expressly limited and restricted to the ownership and control of lands not in excess of 500 acres, and the court further decreed:

"the forfeiture and cancellation of the license of the defendant corporation and of its articles of incorporation is

hereby ordered and decreed as well as the immediate dissolution and winding up of the affairs of said corporation."

The judgment also imposed costs and a fine of \$3,000.00.

An appeal was taken to the Circuit Court of Appeals for the First Circuit and a supersedeas obtained. The Circuit Court of Appeals by a divided Court reversed the judgment (106 Fed. (2d) 754). Certiorari was granted by the United States Supreme Court which overruled the Circuit Court of Appeals and affirmed the judgment of the Supreme Court of Puerto Rico (84 U. S. Law Ed. 615). In delivering the opinion of the Supreme Court Mr. Justice Frankfurter stated:

[fol. 146] "The question here in controversy is a matter of great importance to Puerto Rico and involves the power of its legislature to enforce Congressional policies affecting the Island. We therefore brought the case here on a writ of certiorari, 309 U. S. —, ante, 416, 60 S. Ct. 467, to review a decision of the Circuit Court of Appeals for the First Circuit, 106 F. (2d) 754. That court had reversed the judgment of the Supreme Court of Puerto Rico, 53 P. R. R. 779 (Spanish edition), sustaining a proceeding in quo warranto brought against respondent."

On the aforesaid appeal there was merely decided the validity of the forfeiture of a corporate Charter. On this appeal there is involved the question of forfeiture of lands. On the prior appeal the Supreme Court finally decided that the insular Courts were validly invested with jurisdiction to enforce the Congressional policy that corporations may not own more than 500 acres of land. The United States Supreme Court decided:

"On the only questions now before us, we think the Supreme Court of Puerto Rico acted within the scope of power validly conferred upon it by the Legislative Assembly."

The People of Puerto Rico on the prior appeal expressly represented to the Court that no forfeiture of land was involved. We quote from page 60 of the brief filed by the People of Puerto Rico in support of the petition filed in the Supreme Court of the United States for a writ of certiorari to the Circuit Court of Appeals, First Circuit.

"As heretofore pointed out (*ante*, p. 14; and footnotes 3, 11, 12, pp. 10, 51, 52) no forfeiture of land is involved in

this case. No such forfeiture was asked in the complaint (Prayer, R. 4-5; 46-47); and none was adjudged by the insular Supreme Court, nor even hinted at in its findings (R. 304, 305). And yet this idea, that the insular government cannot be permitted to "forfeit land" in this proceeding, runs all through the opinion of the majority judges of the Circuit Court; and manifestly influences their conclusions. It reflects a wholly mistaken impression of the character of the case. No question of land forfeiture is involved, in any way."

In the brief for the People of Puerto Rico filed in the Supreme Court of the United States, the People again urged that no land forfeiture was involved and it is stated at page 10 of that brief:

"that the majority judges of the Circuit Court of Appeals were perhaps led into error by failing to notice that no land forfeiture is involved in this case at all; that none was asked in the complaint, and none adjudged by the insular court; and that there is here a case of present continuing violations, not simply of 'past violations'."

We quote from the printed copy of the oral argument before the Supreme Court (Typewritten Record, p. 160):

"The Chief Justice: Was there any provision with respect to the disposition of property that had been acquired by the corporation?"

Mr. Rigby: There is a provision that if the Island Government has so chosen, there shall be a forfeiture of the property and a cancellation of all the entries in the records.

The Chief Justice: You mean forfeiture to the Government?

Mr. Rigby: To the Government; that has not been asked in this case. Our opponents call attention to that and say the existence of that provision for the penalty makes this an *ex post facto* law, because these penalties were imposed after the organization of this corporation.

Our answer to that is two-fold; in the first place, as I have said, that that has not been asked in this case nor adjudged by the Supreme Court of Puerto Rico; that if later on an attempt should be made to enforce the penalties, [fol. 148] proper allegations would have to be made and the company would have its day in court upon them.

Mr. Justice Frankfurter: What is the prayer of the bill?

Mr. Rigby: The prayer of the bill is simply for the dissolution—it is at the bottom of page 4, running onto page 5 of the complaint:

‘Therefore, The People of Puerto Rico, through its aforesaid attorney general, prays this Honorable Court to adjudge the said domestic corporation to have forfeited its franchise, to order its immediate dissolution, to prohibit it to do business in Puerto Rico and to impose on the same the proper fine, with all other pronouncements which in equity and justice are pertinent in the premises.’

Of course, the last is the usual prayer for general relief.

The Chief Justice: What was the judgment?

Mr. Rigby: The judgment was for the dissolution of the corporation” (p. 6).

Pages 8 and 9:

“Mr. Justice Stone: How is their choice evidenced, by a suit?

Mr. Rigby: I presume it would have to be by a suit, by some formal action of some kind. Nothing of that kind is here so far as the facts in this case are concerned. The prayer is only, as I read, in the usual form, under quo warranto procedure for forfeiture of charter, license to do business, dissolution of the corporation, fine and costs—and that is all that has been ordered. So, normally, what would follow that in effect would be a requirement of dissolution by the stockholders in the manner pointed out by the corporation law, and if necessary, the appointment of a receiver and the winding up of the business of the corporation, as the business of any corporation is wound up upon death of the corporation, for any purpose at all or for any reason.

[fol. 149] The Chief Justice: Is there any time within which the Government of Puerto Rico may conclude to make its choice after the judgment?

Mr. Rigby: If it did, it would have, as I said before, as we understand it, to file a supplemental bill or some new action in court, or begin a new action and proceed and give the respondents their day in court, because there is nothing in this case to authorize a summary proceeding, upon the face of this judgment. There is nothing of that kind in this judgment at all.”

It is clear therefore that land forfeiture was not involved on the prior appeal and it is equally clear that land forfeiture is involved on the present appeal. The Receiver is vested by the terms of the order appointing him with all of the real estate formerly owned by the defendant corporation.

The appellant also contends that the order appealed from deprives persons of property without due process of law. The property owned by the corporation at the time of the commencement of the Quo Warranto proceeding had been transferred to a civil partnership prior to the entry of the order appointing the Receiver. The persons constituting the civil partnership were not a party to this proceeding and were in possession of the property under claim of title. Without notice to such persons, without a hearing or an opportunity to be heard the Court has ordered the Receiver to take possession of such property.

The properties confiscated and turned over to the Receiver were acquired prior to 1935. It is clear that the law as thus invoked and applied is an Ex Post Facto Law. It imposes forfeitures and penalties with respect to titles acquired prior to the enactment of the law.

[fol. 150]

2

The stage in the proceedings in the Supreme Court of Puerto Rico (also the Court of first instance) at which the Federal questions sought to be reviewed were raised.

In the Quo Warrants' proceeding the defendant filed a Demurrer contending among other things that the Court below was without jurisdiction because — was brought under Act 47 which is void as it authorizes the confiscation and deprivation of property without due process of law and that said Act No. 47 is an ex post facto law (Prior Appeal, p. 57). The same questions were raised on the motion to dismiss made at the close of the plaintiff's case (Prior Appeal, p. 127). On the application for the appointment of a Receiver the appellant raised these same objections and others (Typewritten Record, pp. 35, 36).

The amount or value in controversy is in excess of \$5,000.

The value of appellant's properties involved in the forfeitures imposed in these proceedings is in excess of \$2,000,000 (Typewritten Record, p. 219).

(b)

The judgment appealed from on the question of the Local Law alone (apart from the Federal questions involved) is "inescapably wrong" or "patently erroneous".

The adjudication of a forfeiture of lands in a Quo Warranto suit is a violation of law that is "inescapably wrong" or "patently erroneous."

The complaint sought the forfeiture of the franchise and not the forfeiture of land (Record, p. 1).

The final judgment adjudicated the forfeiture of the franchise and did not adjudge the forfeiture of land (Record, p. 24).

[fol. 151] The order appealed from does work a forfeiture of the land (Record, p. 202).

The law is well settled that a forfeiture of a corporate franchise does not justify a forfeiture of lands or goods.

"When we examine the first of these grounds, we find nothing in the books to support an idea that the abuse of a corporate franchise occasions a forfeiture of land or goods, rights or credits, or in fact, occasions any other forfeiture but the franchises themselves. The consequence of a breach of the implied condition on which their liberties were granted, was not that they should forfeit their property or possessions if they abused their franchises, but only that they should forfeit their franchises"

Consequently the judgment could not direct a seizure of corporate possessions, as a forfeiture for the violation of the charter."

State Bank v. State, 1 Blackford (Ind.), 267, 281, 12 Am. Decisions, 234, 235.

The decisions of the Supreme Court of California are commonly followed in Puerto Rico because many of its codes and statutes derive from the laws of that state.

In Havemeyer v. Superior Court, 84 Cal. 327, 379, the Supreme Court of California said:

"What is forfeited to the state, and all that is forfeited, is the character,—the right to be a corporation; and this is presumed solely upon the ground that the condition upon which it was granted has been violated. . . . If this condition is broken, the charter which the state has given is taken back by the state; but the property which the corpora-

tion has acquired with its own means goes to those who have paid for it, and they have the right to deal with it just as others similarly situated may deal with their property."

'In *People v. O'Brien* the New York Court of Appeals stated in 111 N. Y. 1 at page 37:

[fol. 152] "Considering the power which the state has to terminate the life of corporations organized under its laws, and the authority which its attorney-general has by suit to forfeit its franchises for misuse or abuse and to regulate and restrain corporations in the exercise of their corporate powers, there is little danger to be apprehended in the future from the overgrowth of power, or the monopolistic tendencies of such organizations, but whatever that danger may be, it is trivial in comparison with the widespread loss and destruction, which would follow a judicial determination, that the property invested in corporate securities, was beyond the pale of the protection afforded by the fundamental law.

It is not perhaps strange, in the great variety of cases bearing upon the subject, and the manifold aspects in which questions relating to corporate rights and property have been presented to the courts that dicta, couched in general language, may be found giving color to the plaintiff's claim; but we think that there are no reported cases in which the judgment of the court has ever taken the franchises or property of a corporation from its stockholders and creditors, through the exercise of the reserved power of amendment and repeal, or transferred it to other persons or corporations, without provision made for compensation."

The order or decree appealed from is clearly erroneous because the final judgment contained no provisions with respect to either a receivership or confiscation or alienation of property. The statute Act 47, above quoted expressly provides that in cases of alienation or confiscation "the final judgment shall fix the reasonable price to be paid for said property . . ."

The final judgment here is the judgment that was affirmed by the United States Supreme Court and is a judgment from which no appeal may be taken and is thus final in a complete [fol. 153] sense. That judgment is utterly devoid of any

reference to a receivership or confiscation of property or fixing of price for property to be confiscated or sold.

The Supreme Court of Puerto Rico erred in its interpretation of the local laws involved.

1st. Act 47 was interpreted as giving to the People an option to confiscate appellant's property or to have it sold at public auction. The Court below ruled (a) that the option might be exercised anytime within six months of the final judgment instead of ruling that the sale, if any, must take place within the said six months period, and (b) refused to rule that the statute requires the final judgment to state provisions with respect to value or price of sale. The interpretation runs counter to the plain words of the statute and counter to the clear mandate of the law and violates well settled rules of construction. That part of the statute providing for the option to confiscate or have sold at auction reads as follows:

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, the People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf a confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered."

"In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

We contend, with respect to the sale at public auction that there can be only one reasonable construction. The auction sale must take place within six months from the date of the final judgment. The phrase in the statute "within a term not greater than six months" limits and is [fol. 154] applicable to the phrase "the sale at public auction". Grammatically and in accordance with the settled rule of construction (last antecedent rule) the words "within a period not greater than six months" apply to and qualify the words "sale at public auction" that immediately precede. The words do not apply or qualify the word "option".

Puget Sound Electric Ry. v. Benson, 253 Fed. 710;
State ex rel. Stewart v. District Ct., 65 Pac. (2d)
141;

Hopkins v. Andersen, 21 Pac. (2) 560;

Board of Port Comm's. v. Williams, 60 Pac. (2) 454;

Taylor v. Prudential Ins. Co., 253 N. Y. S. 55.

(b) Another patent error lies in the interpretation of Act No. 47 by the Supreme Court of Puerto Rico. That Court gives no effect to the words contained in Section 2 of the Law:

"the final judgment shall fix the reasonable price to be paid for said property . . ."

The statute in unmistakable language requires that the final judgment must fix the value or price in the event of either confiscation or sale. Section 6 of the Quo Warranto Law reads as follows:

"Whenever in the opinion of the Court it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall decree the dissolution of the defendant entity if it be a domestic corporation, the prohibition to continue doing business in the country if a foreign corporation, the nullity of acts done and contracts made by the defendant corporation or entity, and in addition, the cancellation of [fol. 155] every entry or registration made by the said corporations in the public registries of Puerto Rico shall be decreed; and when a decree of nullity affects real property and the People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings. . . ."

The final judgment in this proceeding contained no reference to a receiver and contained no provisions with respect to confiscation or sale and no provisions as to prices or value of the property. The statute must be construed to mean that the judgment shall contain, what the statute says, a provision fixing the reasonable price. There is no alternative. It is plainly error to rule that the statute permits confiscation or sale pursuant to a judgment that contains no provisions fixing the price.

2. The Supreme Court of Puerto Rico erred in its construction of Section 182 of the Code of Civil Procedure. That section sets forth the statutory jurisdiction for the appointment of a Receiver. It reads as follows:

"A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or jointly interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

2. After judgment, to carry the judgment into effect.

[fol. 156] 3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity."

(a) We note first that jurisdiction to appoint a Receiver is confined to actions that are pending or that have passed to judgment. Here no action was pending at the time of the appointment of the Receiver. The action had terminated in a final judgment that had been appealed to the United States Supreme Court.

Section 348 of the Code of Civil Procedure defines the meaning of pending action:

"An action is deemed to be pending from the time of its commencement until its final determination upon appeal or until the time to appeal has expired, unless the judgment is sooner satisfied."

The Supreme Court of Puerto Rico in *Morales v. Cruz Velez*, 36 P. R. R. 216, referring to Section 91 and 348 of Civil Code of Procedure said:

"Construing the two articles together we feel bound to hold that an action is still pending until an unappealable judgment arises."

The judgment of affirmance by the Supreme Court of the United States is an unappealable judgment. The case is therefore not a pending case, it was terminated. Therefore a Receiver cannot lawfully be appointed on the ground that an action is pending. There is one other ground to [fol. 157] consider: Is this a case where a Receiver may be appointed in an action that has passed to judgment? The statute we contend does not authorize the appointment of a Receiver in this case. This statute was taken in almost the same language from a similar California Statute. The local legislature in adopting the California statute intended it to have the intent and meaning it had in the original state as interpreted by the Courts of that State. Only in two cases of those provided for in Section 182 of the Code of Civil Procedure can a receiver be appointed after judgment, to wit, in the two cases expressly mentioned in the statute and these are the ones comprised in subdivisions 2 and 3 of said article. Section 564 of the Code of Civil Procedure of California, which the Supreme Court of Puerto Rico has stated in almost a literal copy of Section 182 of the Code of Civil Procedure, provides as follows:

Sec. 564. Appointment of Receivers. A receiver may be appointed by the Court in which an action is pending, or by the judge thereof.

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appeared that the mortgaged property is in danger of being

lost, removed, or materially injured, or that the conditions of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

3. After judgment, to carry the judgment into effect;

[fol. 158] 4. After judgment, to dispose of an appeal, or in proceedings in aid or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied; or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

6. In an action of unlawful detainer, in those cases in which the superior court has exclusive original jurisdiction;

7. In all other cases where receivers have heretofore been appointed by the usages of courts in equity.

It is well settled in California that in accordance with the provisions of Section 564 of the Code of Civil Procedure of said State there are only two provisions which authorize the appointment of a Receiver after judgment, to wit, those contained in subdivision 3 and 4 of said section which are identical to subdivisions 2 and 3 of Section 182 of our code:

There are but two statutory provisions authorizing the appointment of a receiver after judgment. Subdivisions 3 and 4 of Section 564 of the Code of Civil Procedure.

22 Cal. Juris., sec. 33, page 451.

And it is to these two subdivisions, and to them alone, that paragraph 1 of Section 182 refers when it provides that a receiver may be appointed in an action which has passed to judgment.

The first paragraph of Section 564 of the Code of Civil procedure of California refers to an action which is pending but not to an action which has passed to judgment, whereas the first paragraph of Section 182 of our code mentions both [fol. 159] cases. This, it is submitted, makes all the more clear our contention that only subdivisions 2 and 3, which expressly so provide, authorize the appointment of a receiver after judgment. The legislature of Puerto Rico in-

cluded the words "or has passed to judgment" to harmonize the first paragraph of Section 182 with the subsequent provisions of said section. In other words; it is evident that the words of the first paragraph with regard to pending actions refer to subdivisions 1, 4 and 5, and the words "or has passed to judgment" refer to subdivisions 2 and 3 which expressly provide for the appointment of a receiver after judgment.

Leaving aside the fact that the petitioner's motion is based expressly on subdivisions 4 and 5, it is obvious that subdivisions 2 and 3 would be and are inapplicable. The doctrine in California is that subdivision 3 of Section 564 of the Code of Civil Procedure of said State which authorizes the appointment of a receiver "after judgment, to carry the judgment into effect" applies only when the judgment affects specific property.

"A receiver may be appointed 'after judgment, to carry the judgment into effect', unless the execution thereof has been stayed by proper bond. This code provision applies only where the judgment affects specific property."

22 Cal. J-ris., sec. 34, page 452.

White v. White, 130 Cal. 528.

With regard to subdivision 3 it is obvious that the same can not be invoked for the purpose of the appointment of a receiver in this case inasmuch as there is no property to dispose of in accordance with the judgment in view of the fact that the judgment makes no provision whatever with regard to defendant's properties. Nor is there any need of preserving property during the pendency of an appeal. Nor is this a case involving proceedings in aid of execution when an execution has been rendered unsatisfied.

[fol. 160] 3. The Supreme Court of Puerto Rico erred in its interpretation of Section 28 of the corporation law which by its plain language and under well settled decisions places the dissolution "in any manner" of a corporation in the hands of its directors.

The statute follows:

"Section 28.—*Directors as Trustees Pending Dissolution.* Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation, with full power to settle the affairs, collect the out-

standing debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, so far as such moneys and property shall suffice. They shall have power to meet and act under the by-laws of the corporation, and, under regulations to be made by a majority of the said trustees, to prescribe the terms and conditions of the sale of such property, or may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of the said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequently thereto, the surviving directors or director shall be the trustees or trustee thereof, as the case may be, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this Act relative to the winding up of the affairs of such corporation and to the distribution of its assets."

"Section 29.—*Powers and Liabilities of Trustees in Liquidation.*—The directors constituted trustees as aforesaid shall have power to sue for and recover the aforesaid debts and property by the name of the corporation and shall be suable by the same name, or in their own names or individual capacities for the debts owing by such corporation, [fol. 161] and shall be jointly and severally responsible for such debts to the amount of the money and property of the corporation which shall come to their hands or possession as such trustees."

"Section 31.—*Distribution of Assets by Trustees or Liquidators.*—The said trustees or liquidators shall pay ratably, so far as its assets shall enable them, all the creditors for the corporation who prove their debts in the manner directed by the court or by the law of civil procedure. If any balance remain after the payment of such debts and necessary expense, the same shall be distributed among the stockholders."

"Section 32.—*Pending Suits not Affected by Dissolution.* Any suit now pending or hereafter to be begun against any

corporation which may become dissolved before final judgment, shall not lapse by reason of such dissolution; but no judgment shall be entered in any such action except upon notice to the trustees or liquidators of the corporation."

Identical or similar statutory provisions have been interpreted and applied repeatedly by the courts. The right of the directors, in their character of liquidators, to appear in suits affecting the corporation, whether as plaintiffs or as defendants, under statutes of this nature, is well established.

"In many states statutes have been enacted designating the directors of a dissolved corporation as its trustees or providing for the judicial appointment of trustees for the dissolved corporation. Such statutes do not impair the obligation of the contracts of creditors."

"The preponderance of authority in respect of such statutes is in favor of the doctrine that the general term 'dissolution' is applicable to dissolution produced by the forfeiture of corporate charters; but in some jurisdictions the position has been taken that only voluntary dissolutions are within the purview of the statutes in which this term is used without qualification."

13 Am. Jur., page 1202.

[fol. 162] "In some states it has been laid down that trustees of dissolved corporations are empowered to sue in the name of the defunct corporations.

In most jurisdictions, however, the clauses by which their procedural capacity is defined have been construed as importing simply that in any action involving the claims or liabilities of a defunct corporation, the trustees are ordinarily the proper parties, plaintiff or defendant."

13 Am. Jur., pages 1204-1205.

"Generally, the trustees of a defunct corporation as such may sue and, conversely, suit may also be brought against them. In addition to their powers of maintaining and defending actions pending at the time of the dissolution, trustees have power to confess judgment on indebtedness which the corporation cannot pay."

19 C. J. S., pages 1518-1519;

General Ry. Signal Co. v. Cade, et al., 106 N. Y. S. 729.

Puerto Rico adopted its Corporation Law from the New Jersey Corporation Law. The Court of Errors and Appeals of New Jersey in *Grey Att. Gen. v. Newark Plankroad Co.*, 65 N. J. L. 603, a Quo Warranto proceeding, held that a judgment dissolving a corporation terminated the corporate existence except that it continued as a body corporate for the purpose of winding up its affairs, disposing of and conveying its property and dividing its capital.

Harris-Woodbury Lumber Co. v. Coffin, 179 Fed. 257.

Here there has been no hearing on the issue of just compensation. There is merely a notice of motion for the appointment of a receiver with a provision in that order for an ex parte application by the receiver for an order per [fol. 163] mitting the sale at public auction of all of the property formerly owned by the appellant with no hearing as to the terms of sale or price or compensation.

The Court Below was Without Jurisdiction to Appoint a Receiver

In the quo warranto proceeding there were no allegations in the complaint upon which an application could be based for the appointment of a Receiver. The quo warranto suit was concluded and finally determined and ended upon the entry of the final judgment. In compliance with the final judgment in the quo warranto suit the assets of the corporation with the unanimous consent of its stockholders had been transferred by the Liquidating Trustees to a civil partnership and all the debts had been paid (Record, pp. 35, 64).

The Court was without jurisdiction to appoint a Receiver after judgment because at the time the Receiver was appointed the judgment had already been carried into effect. The purpose of the quo warranto suit as we have heretofore established was to effectuate the forfeiture of the corporate charter. The Charter was forfeited, the costs imposed were paid and the fine paid. That constituted a satisfaction of the judgment in the quo warranto suit. If there was or if there is any power in the Courts of Puerto Rico to appoint a Receiver of the assets of the dissolved corporation it is clear that there is a necessity for an action or a proceeding to be instituted to accomplish that result. However, here the order was entered after the final judgment on a mere notice of motion. No necessity was shown for the appoint-

ment of a Receiver. Nevertheless the Receiver has been vested with title to all of the assets formerly owned by the corporation but which had been, prior to the Receiver's ap-[fol. 164] pointment, transferred to persons to whom those assets might rightfully be transferred pursuant to the provisions of the Corporation Act of Puerto Rico.

We have said that the Puerto Rico statute was taken literally from the California statute. The Supreme Court of California held in *Havemeyer v. Superior Court*, 84 Cal. 327:

"The conclusion which inevitably follows from these views is, that, in an action under sections 802, et seq. of the Code of Civil Procedure, the rendition of the judgment authorized by section 809 ends the proceedings so far as the superior court is concerned, and that no receiver of the corporate property can be appointed unless a new and distinct proceeding is commenced by a creditor or stockholder of the corporation. (Code Civ. Proc., sec. 565.)"

The appointment of a Receiver in this case involves consequences that are drastic. The corporation had contracts of long standing transacting business with hundreds of individual land owners. These land owners under contracts delivered all the cane sugar produced on the lands owned by these individuals to the corporation. These contracts and the fruits of them under the order appealed from would be in the possession of the Receiver. All of these assets had been, as we assert, properly transferred by the Liquidating Trustees to a civil partnership. All of these property rights, without any trial, without any hearing, have been stripped from the persons in possession of them and turned over to the Receiver under the terms of the order appealed from.

Respectfully submitted, Henri Brown, J. Sifre, Jr.,
Attorneys for Appellant.

Thereafter, to wit, on November 5, 1940, the following Motion of Appellee to Dismiss for want of jurisdiction was filed:

IN THE

United States Circuit Court of Appeals

FOR THE FIRST CIRCUIT

OCTOBER TERM, 1940

No. 3631

RUBERT HERMANOS, INC.,

vs.

Defendant, Appellant,

THE PEOPLE OF PUERTO RICO,

Plaintiff, Appellee.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO,
FROM ORDER APPOINTING RECEIVER, JULY 26, 1940.

**MOTION OF APPELLEE TO DISMISS APPEAL
FOR WANT OF JURISDICTION**

Now comes The People of Puerto Rico, plaintiff-appellee, and moves to dismiss this appeal of the defendant-appellant, Rubert Hermanos, Inc., for want of jurisdiction; and in support of this motion appellee respectfully shows:

1. This is appeal by the defendant, Rubert Hermanos, Inc., is from an order of the Supreme Court of Puerto Rico, in an original *quo warranto* proceeding pending in that court, appointing a Receiver for the defendant's property, for the purpose only of taking possession and managing it, pending the determination of the court with reference to its disposition, and to preserve the *status quo* during the litigation (R. 127-132).

2. Such an order is not a final judgment or decree, but is simply an interlocutory order; and hence,

3. It is not appealable to this court, because it is not a

"final decision" [Judicial Code, Sec. 128(a), "Second", as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936]:

SUGGESTIONS IN SUPPORT OF FOREGOING MOTION

Plaintiff-appellant, Rubert Hermanos, Inc., claiming still to be a domestic corporation of Puerto Rico, appeals from an order of the insular Supreme Court, July 26, 1940, appointing a Receiver to take possession of, manage, and conserve its property, pending the litigation (R. 127-139). The order contains no decision or direction concerning the ultimate disposition of the property.

The order was entered in an original *quo warranto* proceeding in the insular Supreme Court of Puerto Rico, begun February 26, 1937.¹

This case has already been before this Court and the Supreme Court of the United States [*Rubert Hermanos, Inc. vs. People of Puerto Rico*, 106 F. (2d) 754 (No. 3417 in this court); *Puerto Rico vs. Rubert Hermanos, Inc.*, 309 U. S. 543]. The judgment of the insular Supreme Court,

¹ "Amended Complaint", R. 1-4; "Answer of Defendant, Rubert Hermanos, Inc.", R. 5-14; "Judgment", July 30, 1938 (R. 15-16) finding defendant guilty of holding more than 500 acres of land (12,188 acres) in violation of the Act of Congress and of its own articles of incorporation adopted pursuant to that Act and to the local statutes of Puerto Rico, and cancelling its license to be a corporation and its articles of incorporation, and decreeing its immediate dissolution and the winding up of its affairs, and directing it to pay the costs of the proceeding, including \$2,000 attorney's fees, and a fine of \$3,000; Motion of defendant, the People of Puerto Rico, July 30, 1938, for the appointment of a Receiver (R. 16-17); and Order of the insular Supreme Court, November 9, 1938 (R. 17), directing that the motion for the appointment of a Receiver "be left in abeyance" (during the pendency of the former appeal to this Court from the original judgment of July 30, 1938).

July 30, 1938, cancelling the license of the company to be a corporation and ordering its dissolution and the winding up of its affairs, was ultimately affirmed by the United States Supreme Court on March 25, 1940 (309 U. S., *supra*, 543, 550). The mandate from that court was filed in the insular Supreme Court on May 13, 1940; and on the same date the insular Attorney General on behalf of the People of Puerto Rico renewed (R. 18-19) the motion for the appointment of a Receiver, which had been held in abeyance since November 9, 1938 (R. 17, *supra*), while the case was pending in this Court and the United States Supreme Court.² The motion was set for hearing;³ the plaintiff company filed its "Answer and Opposition" (R. 21); arguments were heard, June 24, 1940 (R. 23); and elaborate briefs and reply briefs filed on behalf of both parties (R. 23-120). On July 26, 1940, the insular Supreme Court handed down its opinion (R. 120-127); and on the same date entered its order appointing the Receiver (R. 127-139, *supra*). The company excepted (R. 130-131), and brought this appeal.

THE APPELLANT COMPANY'S CONTENTION

It appears from the briefs on behalf of the appellant company ("Brief in Support of 'Answer and Opposition'"; "IV", R. 56-57, and exhibits appended to its "Reply Brief in Opposition" (R. 118-119), and from the findings in the Court's opinion of July 26, 1940 (at p. 121), that immediately after the affirmance of the original judgment by the

² On March 28, 1940, only three days after the decision of the United States Supreme Court, the appellant company, Rubert Hermanos, Inc., paid to the clerk of the insular Supreme Court \$6,000 to cover the fine and the attorneys' fees and the costs adjudged against it by the original judgment of July 30, 1938 (R. 17-18); and, ten days after the renewal of the People's motion for the appointment of a Receiver, that court directed the distribution for those purposes (R. 20) of the money thus paid.

³ Order, June 4, 1940; R. 21.

United States Supreme Court by its decision of March 25, 1940, the stockholders themselves proceeded to dissolve the appellant corporation and to transfer its property to a newly organized partnership (*sociedad*) composed of its own stockholders, and that accordingly it is now contended by counsel appearing here in the name of the appellant that the original judgment of dissolution of the insular Supreme Court of July 30, 1938 (R. 15-16, *supra*) has already been fully complied with, that the corporation having been voluntarily dissolved, its debts all paid, its property transferred to other hands, and the fine and costs and attorneys' fees imposed by the judgment all paid by the deposit of the \$6,000 on March 28, 1940, only three days after the affirmance by the United States Supreme Court, and accepted and distributed by the order of the insular Supreme Court of May 23, 1940 (*ante*, p. 3; R. 17-18, 20), that therefore there remained no occasion for the appointment of a Receiver, and no jurisdiction in the insular court to appoint one.

APPELLEE'S POSITION

The position of the People of Puerto Rico, the appellee, which was upheld by the insular Supreme Court (*Brief in Support of Motion for the Appointment of a Receiver* (R. 23-32) and *Reply Brief for the People* (R. 58-77), and *Opinion of the insular Supreme Court* (R. 120-127, *supra*) is on the contrary that all of those proceedings of the defendant company and of its stockholders were simply void and had no effect whatever, except as emphasizing the need for the appointment of a Receiver to preserve and protect the property and to keep it in *statu quo* and within the jurisdiction of the court pending the court's final determination as to the method of its disposition, because: (1) Upon the affirmance by the Supreme Court of the United States of the insular Supreme Court's original judgment of dissolution of July 30, 1938 (R. 15-16, *supra*) the corporation was thereby *ipse facto* dissolved and at an end,

eo instanti, so that neither it nor its stockholders could take any further steps in its name nor do anything with its property; and (2) That the attempt to transfer its property to the newly organized *sociedad*, composed of the company's own stockholders was void and ineffective for any purpose.

(3) And further that, since the People of Puerto Rico, under the second paragraph of section 2 and the second paragraph of section 6 of its "Quo Warranto Law", as amended by sections 1 and 2 of Act No. 47 of the Special Session of the Legislature, approved August 7, 1935 (Laws of 1935, Special Session, pp. 530-534; Appendix, *infra*, pp. 11-12) has six months "counting from the date on which the final sentence is rendered",—that is to say, in the present case, six months from May 13, 1940, the date on which the mandate from the United States Supreme Court affirming the insular Supreme Court's original judgment was filed (R. 19) with the clerk of the insular court; which means until November 13, 1940,—to determine "at its option, through the same proceedings", whether it will confiscate the property of any corporation ordered dissolved, as was the present corporation, in *quo warranto* proceedings, because of having "performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof", therefore neither the dissolved corporation nor its stockholders could, before the expiration of that six months period, defeat this option of the insular government, nor deprive the insular court of its jurisdiction over the property in the pending suit, by their own voluntary action, or attempted action, in dissolving the corporation and executing a conveyance of its property to any third parties.

(4) That for all these reasons the insular Supreme Court properly held that it still had jurisdiction over the property as well as over the parties to this case, and could, therefore, properly appoint a Receiver for the property, in its discretion, and under the express authority given it by subdivision four (4) of section 182 of the Code of Civil Procedure of Puerto Rico, to appoint a Receiver in any case where a corporation "has forfeited its corporate rights" (*Appendix, infra*, p. 12); and that the court's exercise of its powers

and discretion in appointing the Receiver under the circumstances of this case was correct. And finally that,

(5) Such appointment of a Receiver, for the purposes merely of taking possession of and preserving the property and holding it in *statu quo* pending the insular court's final determination as to its disposition, after the government's exercise of the option given it by the above-mentioned sections of Act. No. 47 of 1935, + or after the expiration of the six months option without any action under it by the government,—was in no sense a final judgment; but was purely an interlocutory order for the temporary protection of the property, and of the jurisdiction of the court over it; and was, therefore, not appealable. And, hence, that this appeal should be dismissed for want of jurisdiction.

I

This is simply an order appointing a Receiver. It contains no decision concerning the title or the disposition of the property. It is purely interlocutory; it is in no sense final; and is, therefore, not appealable.

It is, of course, recognized that the mere fact that an order may contain provisions for the appointment of a Receiver, or may be cast in the form of an order for the appointment of a Receiver, may not in itself prevent it from being really a final judgment, if it actually contains final decisions or directions concerning the title or ultimate disposition of property or rights of the parties. Such, for example, was the situation in the case of *Knox Loan Association vs. Phillips*, 300 U. S. 194, 197-198, where it was pointed out in the opinion written by MR. JUSTICE CARDOZO that the order was not only one for the appointment of a Receiver, but that (at p. 197) it also embodied a specific final judgment that the respondent was "entitled to the payment of a specific sum of money", and that (*ib.*, p. 197):

"The primary purpose of the suit was the recovery of a judgment for the par value of the shares. Any other relief prayed for or awarded was tributary to that recovery; it was a form of equitable execution to make collection possible."

In such a case the fact that the order for the appointment of the Receiver was embodied in the same judgment order no more defeated the finality of the judgment than it would have defeated the finality of the judgment of July 30, 1938, of the insular Supreme Court in the present case decreeing the dissolution of the corporation, if the order for the appointment of the Receiver had actually been embodied in that same judgment order, instead of the motion for the appointment of the Receiver being ordered to be held in abeyance, as was done (R. 17, *supra*) pending the outcome of the appeal from that judgment in this court, and in the United States Supreme Court. That was the final judgment, in relation to which the order two years later, July 26, 1940, appointing the Receiver, from which this appeal is brought, was, as was said by MR. JUSTICE CARDOZO in the *Knox Loan Association* case as above quoted, only "a form of equitable execution", one of the steps in carrying the judgment into execution.

There may, of course, come a time for another final and appealable judgment in the course of these proceedings, when the time shall come for the insular court to make its determination as to the rights of the insular government upon the option it claims under Act No. 47 of the Special Session of 1935, and as to the supposed rights for which the representatives of the corporation contend to dispose of the property as they see fit, or to make some other disposition of it. But in the meantime the appointment of the Receiver is for the purposes only of conserving the property and of holding it for the final judgment of the court. The order of July 26, 1940 here appealed from is a simple order appointing a Receiver, and nothing else.

II

It is the established rule that such an order is interlocutory merely; is not a "final decision" or final judgment, and is not appealable.

The general rule is epitomized in *Corpus Juris Secundum*, "Appeal and Error", Volume 4, Section 147-a, p. 309 (4 C.J.S., p. 309) as follows:

"In the absence of special statutory provision to the contrary, an order or decree appointing, refusing to appoint, removing, or refusing to remove, a receiver is generally held not to be appealable, either on the ground that it is merely interlocutory, or because it is discretionary; and the same is true of an order removing, or refusing to remove, a trustee or assignee for the creditors; but, if the order or decree determines rights and is a final one, an appeal will lie."

III

As above pointed out, the order of July 26, 1940, here involved does not determine rights in any way.

It appoints a Receiver to hold and preserve the property pending the litigation, for the benefit of whomsoever the court may finally determine to be entitled to it, and subject to whatever directions the court may hereafter give as to its title or disposition.⁴ Hence, the general rule is applicable here. The order appointing the Receiver is interlocutory only; is not a "final decision" in any sense; and is not appealable.

⁴ The contingent directions in Paragraph 7 of the order (R. 129), for the Receiver to act for the court under alternative situations that may arise under the People's option, in case it shall be exercised, but only after his proposed steps shall be first "submitted to the previous approval of the court", are in no wise final. There is no present final determination.

CONCLUSION

It follows that this appeal should be dismissed for want of jurisdiction.

Respectfully submitted,

WILLIAM CATTRON RIGBY,
Attorney for Appellee.

GEORGE A. MALCOLM,
Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
*Solicitor for the Department of the Interior,
Of Counsel.*

[fol. 176] Thereafter, to wit, on December 3, 1940, this cause came on to be heard upon appellee's motion to dismiss, Honorable Calvert Magruder, and Honorable John C. Mahoney, Circuit Judges, and Honorable John A. Peters, District Judge, sitting.

Thereafter, to wit, on January 7, 1941, this cause came on to be heard and was fully heard by the Court, Honorable Calvert Magruder, and Honorable John C. Mahoney, Circuit Judges, and Honorable John P. Hartigan, District Judge, sitting.

Thereafter, to wit, on March 31, 1941, the following Opinion of the Court was filed:

[fol. 177] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FIRST CIRCUIT, OCTOBER TERM, 1940

No. 3631

RUBERT HERMANOS, INC., et al., Defendants, Appellants,

v.

THE PEOPLE OF PUERTO RICO, Plaintiff, Appellee

Appeal from the Supreme Court of Puerto Rico

Before Magruder, Mahoney and Hartigan, JJ.

OPINION OF THE COURT—March 31, 1941

MAGRUDER, J.:

Complaining now of an order by the Supreme Court of Puerto Rico appointing a receiver, Rubert Hermanos, Inc., brings this case here a second time. Joined as appellants are five individuals as trustees in liquidation of the corporation. A brief résumé of the earlier phase of the litigation will help toward an understanding of the issues raised in the present appeal:

By Joint Resolution of May 1, 1900, 31 Stat. 715, Congress enacted that every agricultural corporation thereafter organized in Puerto Rico "shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land." This provision was continued in effect by the revised Organic Act, 39 Stat. 951, 965; 48 U. S. C. § 752.

Rubert Hermanos, Inc., was organized under the laws of

Puerto Rico in 1927, with articles of incorporation expressly [fol. 178] containing the aforesaid restriction as to acreage. Notwithstanding the restriction, the corporation proceeded to acquire upwards of 12,000 acres of farming land in Puerto Rico.

In 1935 the legislature of Puerto Rico passed Acts No. 33 and No. 47¹ to implement and add sanctions to the Congressional prohibition. The Supreme Court of Puerto Rico was by these Acts vested with original jurisdiction of all *quo warranto* proceedings which might thereafter be instituted by the Government of Puerto Rico for violation of the 500-acre restriction.²

¹ Act No. 33 of July 22, 1935, Laws of Puerto Rico, Special Session, 1935, p. 418, providing:

"Section 1.—There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *Quo Warranto* proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of *Quo Warranto*.

"Section 2.—All laws or parts of laws in conflict herewith are hereby repealed.

"Section 3.—This Act, being of an urgent character, shall take effect immediately after its approval."

Act No. 47 of August 7, 1935, Laws of Puerto Rico, Special Session, 1935, p. 530, providing:

"Section 1.—Section 2 of An Act entitled 'An Act establishing *Quo Warranto* proceedings', approved March 1, 1902, is hereby amended as follows:

"Section 2.—In case any person should usurp, or unlawfully hold or execute any public office or should unlawfully make use of any franchise, or likewise shall hold any office in any corporation created by and existing under the laws of Puerto Rico, or any public officer shall have done or suffered any act which, by the provisions of the law, involves a forfeiture of his office, or any association or number of persons shall act within Puerto Rico as a corporation, without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General, or any

Several months after the passage of the latter of these two Acts, and pursuant thereto, the People of Puerto Rico commenced quo warranto proceedings in the Supreme Court of Puerto Rico against Rubert Hermanos, Inc., praying the court to adjudge the corporate franchise to have been forfeited, to decree immediate dissolution of the corporation, to impose a proper fine, and for other relief.

[fol. 180] On July 30, 1938, the court gave judgment pronouncing that the defendant corporation was guilty of a violation of the aforesaid provision of the Joint Resolution and of its own articles of incorporation; and imposing a fine of \$3,000. In addition, the judgment read: "The forfeiture and cancellation of the license of the defendant corporation and of its articles of incorporation is hereby ordered and

prosecuting attorney of the respective district court, either on his own initiative or at the instance of another person, may file before any district court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. Where it appears to the court that the several rights of divers parties to the same office or franchise may properly be determined on the same proceeding, the court may give leave to join all such persons in the same petition, in order to try their respective rights to such office or franchise.

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of

decreed, as well as the immediate dissolution and winding up of the affairs of said corporation."

This judgment was reversed by us in *Rubert Hermanos, Inc., v. People of Puerto Rico*, 106 F. (2d) 754. In turn, we were reversed on certiorari, *Puerto Rico v. Rubert Hermanos, Inc.*, 309 U. S. 543, and the case was remanded to the Supreme Court of Puerto Rico for further proceedings not inconsistent with the opinion of the federal Supreme Court.

Mr. Justice Frankfurter, speaking for the court, said that "On the only questions now before us, we think the Supreme Court of Puerto Rico acted within the scope of power validly conferred upon it by the Legislative Assembly." 309 U. S. at 550. But as the case was presented on that earlier appeal

not more than six months counting from the date on which final sentence is rendered.

"In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

"Section 2.—Section 6 of an Act entitled 'An Act establishing *Quo Warranto* proceedings,' approved March 1, 1902, is hereby amended as follows:

"Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.

it is clear that the court did not have before it and did not intend to pass on the validity of so much of Act No. 47 as authorizes the People of Puerto Rico at its option, in the same quo warranto proceedings, to move for the confiscation² of unlawfully held farming land, or in the alternative, to move for the sale of such land at public auction. Nor was any question presented as to the procedure by which the People of Puerto Rico might exercise this option, assuming its validity. These questions would only arise if the People should elect to proceed with a confiscation or a public sale; but no such election had been made when the case came up before. In all three courts, Rubert Hermanos, Inc., sought to challenge the provision in Act No. 47 for confiscation or public sale as being an *ex post facto* penalty invalid [fol. 181] under the Organic Act, 48 U. S. C. § 737. Counsel for the insular government persuaded the courts not to pass on this issue by pointing out, correctly enough, that the People had not asked for confiscation or public sale. Obviously this did not estop the People from subsequently moving for a confiscation or public sale, in accordance with the procedure prescribed in Act No. 47. Appellee has not taken inconsistent positions. The contention of appellants to the contrary is without foundation.

On May 13, 1940, the day on which the mandate of the United States Supreme Court was received by the clerk of the Supreme Court of Puerto Rico, appellee renewed a motion for the appointment of a receiver. This motion had originally been made on July 30, 1938, just after the judgment of dissolution was entered, but the Supreme Court of Puerto Rico held it in abeyance pending the outcome of an appeal from such judgment. The only ground for appointment of a receiver avowed in the motion was that "Such dissolution and disposition of the property of the respondent shall be entrusted to a receiver."

The motion was opposed by the corporation on various grounds, the first being that "The judgment of the court has been complied with. The corporation has been dissolved, its obligations have been extinguished and it has

² The word "confiscation" has an unduly harsh connotation in this connection, because it is apparent from the statute that under this alternative the land is condemned by the People upon the payment of just compensation as provided in the Condemnation Proceedings Act.

disposed of its properties by unanimous agreement of its stockholders and of the liquidators appearing herein." It seems that this had been accomplished two or three days after the decision in *Puerto Rico v. Rubert Hermanos, Inc.*, 309 U. S. 543, was announced; March 25, 1940, by the simple expedient of transferring the properties of the corporation to a partnership composed of those who were its only stockholders.

By the order now appealed from, issued July 26, 1940, the court appointed a receiver. Authority for such appointment was found by the court to be impliedly conferred by Act No. 47 on two grounds: First, it is said, authority to decree the dissolution and winding up of the corporation necessarily presupposes power in the court to enforce compliance with its commands; appointment of a receiver is an [fol. 182] appropriate way for the court to supervise the liquidation. Second, it is said, a receivership is necessary to preserve the status quo, pending decision by the People of Puerto Rico whether to exercise their option to confiscate the excess lands or have them sold at public auction. The court also found authority to appoint a receiver in § 182, paragraph 4, of the Code of Civil Procedure.

Though the insular government asked for a receivership to liquidate the dissolved corporation, the order does not direct the receiver to proceed with the liquidation but on the contrary contemplates the full operation of the business for an indefinite period. The receiver is directed to take possession not only of the land illegally held but also of all the other property of the corporation, movable and immovable, of every kind and description. He is to continue managing said properties and cultivating the lands, until further order of court, doing all that may be necessary to maintain and preserve the business established by the defendant corporation. Specifically, he is authorized to employ, compensate and dismiss workmen, servants, agents and attorneys; to purchase and pay for materials and accessories needed; to settle with creditors all claims in the ordinary course of business; to pay taxes; to initiate and defend all actions in behalf of or against the corporation; to institute all legal proceedings necessary for the purpose of obtaining possession and control of any property of the corporation; to "give all security which might be necessary to secure loans of funds in interest of the trust confided to said receiver by these presents." All moneys coming into

the hands of said receiver as such are to be deposited in his name in one or more banks with the approval of the court, against which deposits the receiver shall have the right to draw by his personal order or by order of his agents. It is further provided that should the People of Puerto Rico request, in accordance with Act No. 47, the sale at public auction of the said properties, the receiver is authorized to proceed "in accordance with the plan which shall be submitted to the previous approval of this court or of the judge acting in the name of this court during [fol. 183] its vacation, to sell said properties at public auction." In addition, it is ordered that the defendant, its directors, officers and agents, and all those persons, partnerships or corporations claiming any right by reason of the assignment or transfer made by the defendant corporation subsequent to the date on which the judgment of dissolution was entered, shall "refrain from disposing of conveying or selling in any manner movable or immovable property of which they might be in possession or which they may have under their control, and from interfering with or obstructing the receiver or impeding him in any form from taking possession of the said properties of said corporation."

Appellee moves to dismiss this appeal on the ground that the order appointing the receiver is interlocutory merely. Interlocutory orders appointing receivers have been appealable from the United States district courts to the circuit courts of appeals for many years. 31 Stat. 660, 28 U. S. C. § 227. But under 28 U. S. C. § 225 only "final decisions" of the Supreme Court of Puerto Rico are appealable to this court.

The ordinary order appointing a receiver is truly interlocutory, leaving questions of substantive right for future determination. However, the present order does more than that. Appellants in opposing the receivership had claimed that under Act No. 47, properly construed, the option given to the People of Puerto Rico, even assuming its validity, must be exercised in the quo warranto proceedings prior to the final judgment of dissolution; that since confiscation or public auction had not been asked for by the insular government, nor provided for in the final judgment of dissolution, the option had lapsed; that under the provisions of §§ 27-29 of the Private Corporations Law of Puerto Rico (Act No. 30, March 9, 1911, as amended by Act No. 24,

April 13, 1916), when a corporation is dissolved in any manner (including forfeiture of its charter), the corporate existence is continued for purposes of liquidation and the directors are made statutory liquidators with full powers to settle the affairs of the corporation and to distribute its property; that such liquidation had been accomplished [fol. 184] and the former shareholders had acquired title to the property as partners; that when the mandate of the United States Supreme Court came down, the quo warranto proceedings in the Supreme Court of Puerto Rico terminated and there was nothing further to be done to carry out the judgment of dissolution. But the Supreme Court of Puerto Rico in the order appealed from and in the accompanying opinion has finally determined all these questions of law against appellants' contentions. The court held that "all said acts done after the date of the judgment which ended the legal existence of the defendant corporation are legally void"; and thereby ruled against the validity of the title to the old corporate property acquired by the succeeding partnership. The asserted right of the directors as statutory liquidating trustees to possess and administer the property of the corporation was finally denied. *Ex parte Tiffany*, 252 U. S. 32, 36. Moreover, the receiver, without further order of court, is authorized to borrow money, and as security therefor to create liens which will take precedence over the property interests of the shareholders. Such an order, in our opinion, is a "final decision" within the meaning of 28 U. S. C. § 225. See *Ex parte Farmers' Loan and Trust Co.*, 129 U. S. 206; *Texas Co. v. International Ry.*, 237 Fed. 921; *Bibber-White Co. v. White River R. Co.*, 115 Fed. 786; *Tornanses v. Melsing*, 106 Fed. 775.

A "final decision" is not necessarily the ultimate judgment or decree completely closing up a proceeding. In the course of a proceeding there may be one or more final decisions on particular phases of the litigation, reserving other matters for future determination. See *Knox National Farm Loan Ass'n v. Phillips*, 300 U. S. 194, 197-98; *Trustees v. Greenough*, 105 U. S. 527; *Gay v. Hudson River Electric Power Co.*, 184 Fed. 689; *Dant & Russell v. Halstead Lumber Co.*, 103 F. (2d) 306. The words "final decisions," like the equivalent "final judgments and decrees" in former acts regulating appellate jurisdiction, have not been understood in a strict and technical sense, but have been given

a liberal and reasonable construction. *Forgay v. Conrad*, 6 How. 201, 203; *City of Eau Claire v. Payson*, 107 Fed. 552, 557.

[fol. 185] The motion to dismiss for lack of jurisdiction is therefore denied.

Coming then to the merits, we do not find ourselves in full agreement with the contentions of either side.

Appellants urge that there was no occasion to appoint a receiver to preserve the status quo pending election by the People pursuant to the option given in Act No. 47, because the option by its own terms had elapsed, and, if this point is not well taken, because the provision of law conferring the option is invalid.

It is said that the option has lapsed, because by its terms the People must exercise it prior to the judgment of dissolution, and this was not done. Section 1 of Act No. 47 provides that "The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered." Section 2 provides that "when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property." The contention is that the clause "within a term of not more than six months from the date on which final sentence is rendered" qualifies only the last antecedent clause "or the alienation thereof at public auction"; and therefore that it is the sale that must take place within six months from the date on which final sentence is rendered. The court below, however, reads § 1 as meaning that the People of Puerto Rico have six months after the judgment of dissolution becomes final within which to apply in the quo warranto proceedings for confiscation or sale at public auction; that this judgment did not become final until the mandate of the United States Supreme Court was received by the clerk of the Supreme Court of Puerto Rico, on May 13, 1940, so that the option could be exercised at any time up to November 13, 1940. We think that this is a reasonable, perhaps the more reasonable, interpretation of the Act, and this being so, we accept the interpretation of a local statute made by the insular court. Section [fol. 186] 2 of Act No. 47 does not necessarily mean, as ap-

pellants contend, that there is to be only one final judgment in the course of the quo warranto proceedings. There may be a final "decree of nullity" upon the determination that the corporation has by its acts forfeited its charter; and if, thereafter, the People should elect to have the property sold at public auction there may, in the same proceedings, be a "final judgment" ordering the sale and fixing "the reasonable price to be paid for said property." The quo warranto proceedings were not at an end with the final affirmance by the Supreme Court of the United States of the "decree of nullity." Indeed, the mandate of the Supreme Court of the United States remanded the case to the insular Supreme Court "for further proceedings" which fairly would include any proceedings necessitated by subsequent exercise of the option.

The validity of the option provision is assailed mainly on the ground that it is in the nature of an ex post facto penalty forbidden by the Organic Act, 48 U. S. C. § 737. At the threshold of the argument it may be plausibly maintained that the provision is not a penalty at all, but a remedial measure to undo the concentration of corporate land-holding brought about in violation of the public policy expressed in the Joint Resolution and in the territorial legislation. However this may be, and assuming, without deciding, that the provision is a penalty, we still do not see that its application here is ex post facto. After Act No. 47 was passed, on August 7, 1935, the corporation continued to hold the forbidden acreage without taking any steps to dispose of the excess lands and without manifesting any intention to do so. Assuming that the corporation would have to be afforded a reasonable time after the passage of the Act to dispose of its holdings, before the so-called penalty of sale by public auction could lawfully be imposed, the corporation did have such reasonable time here, and did nothing about it. The original quo warranto complaint was not filed by the People until January 28, 1936. An amended complaint was filed February 26, 1937, to which the corporation made answer August 19, 1937, claiming that the 500-acre restriction [fol. 187] did not apply to it and evincing a purpose to persist in holding the 12,000 acres. In view of what the court found to be a continuing violation for so long a time after Act No. 47 was passed, the so-called penalty, if applied in the case at bar, is not ex post facto.

We conclude that after the judgment of dissolution was finally affirmed it was still open to the People to exercise the option, and that the Supreme Court of Puerto Rico had jurisdiction in the continuing quo warranto proceedings to entertain and act on any subsequent application by the People in the exercise of the option within the six months' period.

But the order appointing a receiver was, in our opinion, improvidently issued.

"It is perhaps unnecessary to advert to certain well-settled principles governing the appointment of receivers. It is a drastic remedy, and calls for the exercise of the greatest care and judgment; and this is especially true where it is sought to take not only from the parties themselves the management of their own property, but property in the hands of a trustee." *Home Mortgage Co. v. Ramsey*, 49 F. (2d) 738, 742. See *Pomeroy, Equity Jurisprudence* (4th ed.) § 1538.

The general statutory scheme contemplates that upon dissolution the directors, as liquidating trustees shall proceed to wind up the affairs of the corporation. This is true however the corporation is dissolved, whether by voluntary act, expiration of time, or decree of forfeiture. Sections 27, 28 and 30 of the Private Corporations Law of Puerto Rico are clear and unambiguous on this point. Section 27 continues the corporate existence for purposes of liquidation in the case of "all corporations, whether they expire through the limitation contained in the articles of incorporation or are annulled by the Legislature, or otherwise dissolved." Section 28 provides that "Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation, with full power to settle the affairs

See *Grey v. Newark Plank Road Co.*, 65 N. J. Law 603, 48 Atl. 557; *Watts v. Vanderbilt*, 45 F. (2d) 968-70; *Pomeroy, Equity Jurisprudence* (4th ed.) §§ 1544, 1548. [fol. 188] "These trustees, like trustees in general, are of course amenable to the jurisdiction of a court of equity, and may be called to account there for any neglect of duty or abuse of power. But until they are so called to account in an independent action or proceeding by a party in interest, no court has any excuse for interference. * * *" *Havemeyer v. Superior Court*, 84 Cal. 327, 367, 24 Pac. 121, 129. In this connection § 30 of the Private Corporations Law provides that "When any corporation shall be dissolved

in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Porto Rico is situated, on application of any creditor or stockholder, may at any time either continue the directors as trustees as aforesaid, or appoint one or more persons to be liquidators of such corporation. * * * The implication is unmistakable that whatever the mode of dissolution; the directors automatically succeed as liquidating trustees.

The court below relied upon § 182, par. 4, of the Code of Civil Procedure. It is there provided that:

"A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

"4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights."

This does not mean, however, that in case of dissolution, even by forfeiture, a receiver must be appointed as a matter of course. It only preserves to the courts jurisdiction to supplant the statutory trustees upon proper showing by an interested party, agreeably to the usages of courts of equity. *Weatherly v. Capital City Water Co.*, 115 Ala. 156, 171-72, 22 So. 140, 142. See *Havemeyer v. Superior Court*, *supra*.

In the case at bar the receiver obviously was not appointed at the instance of, or to protect any imperilled interest of, either creditors or stockholders. See *Havemeyer v. Superior Court*, 84 Cal. 327, 369-70, 24 Pac. 121, 130.

[fol. 189] Nor have the People of Puerto Rico a sufficient interest in the premises to justify the court in continuing the operation of the business through a receiver for an indefinite period, when the owners of the corporation after its franchise has been forfeited want to wind up the corporate affairs and promptly proceed to do so.

All that remains to be done, so far as any interest of the People is concerned, is to protect the option given by Act No. 47. This option relates only to the disposition of the excess acreage of land, and has nothing to do with the other assets of the corporation of every kind and description, all of which the receiver is commanded to take into his possession by the order appealed from. The People do not

need a receiver to protect the option. If and when the time comes for the court to decree a sale of the land at public auction a master can be appointed to carry through the sale. The land will still be there. Meanwhile, the interest of the People is protected by a lis pendens notice which was entered in the Registry of Property shortly after the institution of the quo warranto proceedings, which notice the corporation unsuccessfully sought to have cancelled.

We are informed that on August 28, 1940, after the entry of the order appointing a receiver, the Attorney General on behalf of the People of Puerto Rico filed in the court below a motion or petition concluding as follows:

"Therefore, The People of Puerto Rico elects to have all the lands in the possession of the respondent sold at public auction, and prays this Court to order the sale at public auction of the said real property by the receiver already appointed by this Court, after the same is assessed in conformity with the provisions of the Condemnation Proceedings Act now in force."

Appellant contends that Act No. 47, properly construed, confers no authority upon the Attorney General to exercise this option on behalf of the People but requires the election to be made by legislative act. This question we do not pass on now, because the Supreme Court of Puerto Rico has had no occasion to consider it. The point may be presented to that court upon remand of the case.

[fol. 190] Further questions of law may arise as to the mechanics of the sale. We shall not anticipate the many problems that may be foreseen as likely to arise in the subsequent proceedings. It will be time enough to consider them if and when an appeal comes to us from an order or decree directing a sale.

The order of the Supreme Court of Puerto is vacated, with costs to the appellants, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

On the same date, to wit, March 31, 1941, the following Order of Court was entered:

ORDER OF COURT—March 31, 1941

It is ordered that the motion to dismiss filed November 5, 1940, be, and the same hereby is, denied.

By the Court.

Arthur I. Charron, Clerk.

On the same date, to wit, March 31, 1941, the following Judgment was entered:

JUDGMENT—March 31, 1941

This cause came on to be heard January 7, 1941, upon the transcript of record of the Supreme Court of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now, to wit, March 31, 1941, here ordered, adjudged and decreed as follows: The order of the Supreme Court of Puerto Rico is vacated, with costs to the appellants, and the case is remanded to that court for further proceedings not inconsistent with the opinion passed down this day.

By the Court.

Arthur I. Charron, Clerk.

[fol. 191] Thereafter, to wit, on April 24, 1941, mandate was stayed until further order of court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 184] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

MAY 20

IN THE
Supreme Court of the United States

OCTOBER TERM, 1940

No. 1073

96

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC., et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT
OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1940

No. 1073

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC., *et al.*,
Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT
OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF**

*To the Honorable, the Chief Justice, and the Associate
Justices of the Supreme Court of the United States:*

Petitioner, The People of Puerto Rico, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit, March 31, 1941 [not yet appearing in the Federal Reporter], vacating the order of the Supreme Court of Puerto Rico, July 26, 1940 (R. 127-130), which had appointed a Receiver for the respondent corporation Rubert Hermanos, Inc.

QUESTIONS PRESENTED

FIRST: Did the Supreme Court of Puerto Rico possess the power or jurisdiction to appoint the Receiver?

SECOND: Assuming that the insular Supreme Court possessed the jurisdiction to do so, did it err in making the appointment? Was the appointment so "improvident" as to require, or justify, reversal by the Circuit Court of Appeals, as "inescapably wrong"?

Petitioner believes that the first question should be answered in the affirmative, and the second question in the negative; that the insular Supreme Court possessed the jurisdiction and power to appoint the Receiver, and that it committed no error in so doing; that the appointment was both within the power and jurisdiction of that court, and was also a proper exercise of the court's power; and, in any event, surely not "inescapably wrong". The Circuit Court of Appeals did not pass directly upon the "*First*" question of the jurisdiction of the insular Supreme Court (although its opinion apparently implies jurisdiction in the insular court); but held, upon the "*Second*" question of the correctness of the insular court's action (R. 180),

"But the order appointing a receiver was, in our opinion, improvidently issued".

Petitioner believes, nevertheless, that *the question here presented on this branch of the case is in reality simply one of the jurisdiction of the insular court to appoint the Receiver*. No other substantial question was presented by the respondents as appellants in the Circuit Court of Appeals. ["Assignment of Errors," R. 131-135; "Statement on Appeal", R. 141-160]. No abuse of discretion is claimed. There is no suggestion that the Receiver is not a fit or competent person, or of any mismanagement, or threatened mismanagement by him. Nor any complaint that the receivership was too broad, or as to its covering personal property or equipment as well as the land. Nothing whatever of that kind. Respondents-appellants' contention in the Circuit Court of Appeals was, in effect, simply that the insular Supreme Court was without power to make the appointment.

STATEMENT OF THE CASE

This is the same case which was here as No. 582 at the October Term, 1939, of this Court, decided March 25, 1940, in which this Court, reversing the Circuit Court of

Appeals, affirmed the judgment of the insular Supreme Court forfeiting the charter of the corporation for violation of the statutes, federal and insular, and of its own articles of incorporation, forbidding it as an agricultural corporation of Puerto Rico to own and control more than 500 acres of land. *People of Puerto Rico v. Rubert Hermanos, Inc.*, 309 U. S. 543.

The present case is stated as follows in the opinion of the Circuit Court of Appeals. (MAGRUDER, J.; R. 170-182):

"MAGRUDER, J. Complaining now of an order by the Supreme Court of Puerto Rico appointing a receiver, Rubert Hermanos, Inc., brings this case here a second time. Joined as appellants are five individuals as trustees in liquidation of the corporation. A brief résumé of the earlier phase of the litigation will help toward an understanding of the issues raised in the present appeal:

"By Joint Resolution of May 1, 1900, 31 Stat. 715, Congress enacted that every agricultural corporation thereafter organized in Puerto Rico 'shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land.' This provision was continued in effect by the revised Organic Act, 39 Stat. 951, 965, 48 U.S.C. § 752.

"Rubert Hermanos, Inc., was organized under the laws of Puerto Rico in 1927, with articles of incorporation expressly containing the aforesaid restriction as to acreage. Notwithstanding the restriction, the corporation proceeded to acquire upwards of 12,000 acres of farming land in Puerto Rico.

"In 1935 the legislature of Puerto Rico passed Acts No. 33 and No. 47¹ to implement and add sanctions to the Congressional prohibition. The Supreme Court of Puerto Rico was by these Acts vested with the original jurisdiction of all *quo warranto* proceedings which might thereafter be instituted by the Government of Puerto Rico for violation of the 500-acre restriction.

"Several months after the passage of the latter

¹ Appendix, *infra*, pp. 43-45 [Quoted by the Court in its footnote "1", R. 171-173].

of these two Acts, and pursuant thereto, the People of Puerto Rico commenced *quo warranto* proceedings in the Supreme Court of Puerto Rico against Rubert Hermanos, Inc., praying the court to adjudge the corporate franchise to have been forfeited, to decree immediate dissolution of the corporation, to impose a proper fine, and for other relief.

"On July 30, 1938, the court gave judgment pronouncing that the defendant corporation was guilty of a violation of the aforesaid provision of the Joint Resolution and of its own articles of incorporation, and imposing a fine of \$3,000. In addition, the judgment read: 'The forfeiture and cancellation of the license of the defendant corporation and of its articles of incorporation is hereby ordered and decreed, as well as the immediate dissolution and winding up of the affairs of said corporation.'

"This judgment was reversed by us in *Rubert Hermanos, Inc. v. People of Puerto Rico*, 106 F. (2d) 754. In turn, we were reversed on certiorari, *Puerto Rico v. Rubert Hermanos, Inc.*, 309 U. S. 543, and the case was remanded to the Supreme Court of Puerto Rico for further proceedings not inconsistent with the opinion of the federal Supreme Court.

"Mr. Justice Frankfurter, speaking for the court, said that 'On the only questions now before us, we think the Supreme Court of Puerto Rico acted within the scope of power validly conferred upon it by the Legislative Assembly.' 309 U. S. at 550. But as the case was presented on that earlier appeal it is clear that the court did not have before it and did not intend to pass on the validity of so much of Act No. 47 as authorizes the People of Puerto Rico at its option, in the same *quo warranto* proceedings, to move for the confiscation² of unlawfully held farming land, or in the alternative, to move for the sale of such land at public auction. Nor was any question presented as

² The word "confiscation" has an unduly harsh connotation in this connection, because it is apparent from the statute that under this alternative the land is condemned by the People upon the payment of just compensation as provided in the Condemnation Proceedings Act. [Footnote "2" of Circuit Court of Appeals itself; R. 174.]

to the procedure by which the People of Puerto Rico might exercise this option, assuming its validity. These questions would only arise if the People should elect to proceed with a confiscation or a public sale; but no such election had been made when the case came up before. In all three courts, Rubert Hermanos, Inc., sought to challenge the provision in Act No. 47 for confiscation or public sale as being an *ex post facto* penalty invalid under the Organic Act, 48 U.S.C. § 737. Counsel for the insular government persuaded the courts not to pass on this issue by pointing out, correctly enough, that the People had not asked for confiscation or public sale. Obviously this did not estop the People from subsequently moving for a confiscation or public sale, in accordance with the procedure prescribed in Act No. 47. Appellee has not taken inconsistent positions. The contention of appellants to the contrary is without foundation.

"On May 13, 1940, the day on which the mandate of the United States Supreme Court was received by the clerk of the Supreme Court of Puerto Rico, appellee renewed a motion for the appointment of a receiver. This motion had originally been made on July 30, 1938, just after the judgment of dissolution was entered, but the Supreme Court of Puerto Rico held it in abeyance pending the outcome of an appeal from such judgment. The only ground for appointment of a receiver avowed in the motion was that 'Such dissolution and disposition of the property of the respondent shall be entrusted to a receiver.'

"The motion was opposed by the corporation on various grounds, the first being that 'The judgment of the court has been complied with. The corporation has been dissolved, its obligations have been extinguished and it has disposed of its properties by unanimous agreement of its stockholders and of the liquidators appearing herein.' It seems that this had been accomplished two or three days after the decision in *Puerto Rico v. Rubert Hermanos, Inc.*, 309 U.S. 543, was announced, March 25, 1940, by the simple expedient of transferring the properties of the corporation to a partnership composed of those who were its only stockholders.

"By the order now appealed from, issued July 26, 1940, the court appointed a receiver. Authority for such appointment was found by the court to be impliedly conferred by Act No. 47 on two grounds: First, it is said, authority to decree the dissolution and winding up of the corporation necessarily presupposes power in the court to enforce compliance with its commands; appointment of a receiver is an appropriate way for the court to supervise the liquidation. Second, it is said, a receivership is necessary to preserve the status quo, pending decision by the People of Puerto Rico whether to exercise their option to confiscate the excess lands or have them sold at public auction. The court also found authority to appoint a receiver in § 182, paragraph 4, of the Code of Civil Procedure.

STATUTES

The statutory provisions chiefly involved are indicated in the Brief in Support of this Petition (*infra*, p. 23), and are set out in the Appendix (*infra*, pp. 29-48).

OPINION OF THE CIRCUIT COURT OF APPEALS

The Circuit Court of Appeals (R. 170-182) holds:

FIRST. That the order appointing the Receiver was, in the present instance, an appealable "final decision" within the meaning of Section 128 (a) "Fourth" of the Judicial Code as amended by the Act of February 13, 1925; and, therefore, overrules the motion [R. 161-169] of The People of Puerto Rico [this petitioner, appellee there] to dismiss the appeal for want of jurisdiction (R. 176-178). It says (R. 177-178):

"A 'final decision' is not necessarily the ultimate judgment or decree completely closing up a proceeding. In the course of a proceeding there may be one or more final decisions on particular phases of the litigation, reserving other matters for future determination. See *Knox National Farm Loan Ass'n v. Phillips*, 300 U. S. 194, 197-98; *Trustees v. Greenough*, 105 U. S. 527; *Gay v. Hudson River Electric*

Power Co., 184 Fed. 689; *Dant & Russell v. Halstead Lumber Co.*, 103 F. (2d) 306. The words 'final decisions,' like the equivalent 'final judgments and decrees' in former acts regulating appellate jurisdiction, have not been understood in a strict and technical sense, but have been given a liberal and reasonable construction. *Forgay v. Conrad*, 6 How. 201, 203; *City of Eau Claire v. Payson*, 107 Fed. 552, 557."

SECOND. The opinion proceeds (R. 178):

"Coming to the merits, we do not find ourselves in full agreement with the contentions of either side."

THIRD. As to the principal contentions of the appellants there, *Robert Hermanos, Inc.*, the corporation, and its directors claiming to be liquidating trustees [the respondents here], the Circuit Court of Appeals holds against them, and sustains the position of this petitioner, The People of Puerto Rico, which had been upheld by the insular Supreme Court (R. 121-125). The Circuit Court of Appeals holds that it will not disturb the insular Supreme Court's interpretation of the provision of Section 2 of the *Quo Warranto* Act as amended by Section 1 of Act No. 47 of the Special Session of 1935 (Appendix, *infra*, p. 44) that "The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation³ of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered",

"as meaning that the People of Puerto Rico have six months after the judgment of dissolution becomes final within which to apply in the *quo warranto* proceedings for confiscation or sale at public auction; that this judgment did not become final until the mandate of the United States Supreme Court was re-

³ Really condemnation upon payment of just compensation. See footnote 2, *ante*, p. 4.

ceived by the clerk of the Supreme Court of Puerto Rico, on May 13, 1940, so that the option could be exercised at any time up to November 13, 1940. We think that this is a reasonable, perhaps the more reasonable, interpretation of the Act, and this being so, we accept the interpretation of a local statute made by the insular court."

In this connection the Circuit Court overrules (R. 178-179) the appellants' [respondents'] contention that there can be only one final judgment in the course of the *quo warranto* proceedings, and says (R. 179):

"There may be a final 'decree of nullity' upon the determination that the corporation has by its acts forfeited its charter; and if, thereafter, the People should elect to have the property sold at public auction there may, in the same proceedings, be a 'final judgment' ordering the sale and fixing 'the reasonable price to be paid for said property.' The *quo warranto* proceedings were not at an end with the final affirmance by the Supreme Court of the United States of the 'decree of nullity.' Indeed, the mandate of the Supreme Court of the United States remanded the case to the insular Supreme Court 'for further proceedings' which fairly would include any proceedings necessitated by subsequent exercise of the option."

FOURTH. The court overrules the appellants-respondents' contention [*Confer*, "Assignment of Errors", numbers 16 and 17, R. 134] that the option provision in Act No. 47 is invalid as "in the nature of an *ex post facto* penalty forbidden by the Organic Act", saying (R. 179):

"At the threshold of the argument it may be plausibly maintained that the provision is not a penalty at all but a remedial measure to undo the concentration of corporate land-holding brought about in violation of the public policy expressed in the Joint Resolution and in the territorial legislation. However this may be, and assuming, without deciding that the provision is a penalty, we still do not see that its application here is *ex post facto*. After Act No.

47 was passed, on August 7, 1935, the corporation continued to hold the forbidden acreage without taking any steps to dispose of the excess lands and without manifesting any intention to do so. Assuming that the corporation would have to be afforded a reasonable time after the passage of the Act to dispose of its holdings, before the so-called penalty of sale by public auction could lawfully be imposed, the corporation did have such reasonable time here, and did nothing about it."

FIFTH. The court concludes on this branch of the case (R. 180):

"We conclude that after the judgment of dissolution was finally affirmed it was still open to the People to exercise the option, and that the Supreme Court of Puerto Rico had jurisdiction in the continuing *quo warranto* proceedings to entertain and act on any subsequent application by the People in the exercise of the opinion within the six months' period."

SIXTH. The court then holds, however (R. 180):

"But the order appointing a receiver was, in our opinion, improvidently issued."

The court bases this decision on the following grounds (R. 180-182):

A. That (R. 180) Sections 27, 28 and 30 of the Private Corporations Law of Puerto Rico (Appendix, *infra*, pp. 41-42) indicate that

"The general statutory scheme contemplates that upon dissolution the directors as liquidating trustees shall proceed to wind up the affairs of the corporation. This is true however the corporation is dissolved, whether by voluntary act, expiration of time, or decree of forfeiture."

"The insular Supreme Court holds to the contrary, that these sections do not relate to a decree of forfeiture (R. 123-124, 124-127). *Confer, infra*, "Petitioner's Position", pp. 14-18.

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B. That (R. 181), as to Section 182 of the Code of Civil Procedure,⁵ relied upon by the insular Supreme Court:

"This does not mean, however, that in case of dissolution, even by forfeiture, a receiver must be appointed as a matter of course. It only preserves to the courts jurisdiction to supplant the statutory trustees upon proper showing by an interested party, agreeably to the usages of courts of equity." (*Italics supplied*)

C. That (R. 181) in the present case the Receiver "obviously was not appointed at the instance of, or to protect any imperilled interest of, either creditors or stockholders."

D. That The People of Puerto Rico does not have (R. 181) any "sufficient interest in the premises to justify the court in continuing the operation of the business through a receiver",

"for an indefinite period, when the owners of the corporation after its franchise has been forfeited want to wind up the corporate affairs and promptly proceed to do so."

E. That The People of Puerto Rico "do not need a receiver to protect the option" (R. 181-182). The court says (*ib*):

"All that remains to be done, so far as any interest of the People is concerned, is to protect the option given by Act No. 47. This option relates only to the

⁵ Providing that. (Appendix, *infra*, p. 46):

"A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof: . . .

"4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights. (*Italics supplied*)

"5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity."

disposition of the excess acreage of land, and has nothing to do with the other assets of the corporation of every kind and description, all of which the receiver is commanded to take into his possession by the order appealed from. The People do not need a receiver to protect the option. If and when the time comes for the court to decree a sale of the land at public auction a master can be appointed to carry through the sale. The land will still be there. Meantime, the interest of the People is protected by a *lis pendens* notice which was entered in the Registry of Property shortly after the institution of the *quo warranto* proceedings, which notice the corporation unsuccessfully sought to have cancelled."⁶

⁶ The Circuit Court of Appeals adds (R. 182):

"We are informed that on August 28, 1940, after the entry of the order appointing a receiver, the Attorney General on behalf of the People of Puerto Rico filed in the court below a motion or petition concluding as follows:

"Therefore, The People of Puerto Rico elects to have all the lands in the possession of the respondent sold at public auction, and prays this Court to order the sale at public auction of the said real property by the receiver already appointed by this Court, after the same is assessed in conformity with the provisions of the Condemnation Proceedings Act now in force."

"Appellant contends that Act No. 47, properly construed, confers no authority upon the Attorney General to exercise this option on behalf of the People, but requires the election to be made by legislative act. This question we do not pass on now, because the Supreme Court of Puerto Rico has had no occasion to consider it. The point may be presented to that court upon remand of the case."

While, as the Circuit Court of Appeals says, the question does not appear to be directly presented at this time, yet the option may be regarded as having been properly exercised by the insular government. Its exercise was not the making

PETITIONER'S POSITION

FIRST. Petitioner, The People of Puerto Rico, while still believ-

of a legislative rule; and was not, therefore, legislative in character. It was not a judicial act. It follows that it was an executive act; that it falls within the scope "*of the remaining one of the three among which the powers of government are divided*", that is, the executive power. *Springer vs. Philippine Islands*, 277 U. S. 189, 202-203. The "supreme executive power" in Puerto Rico is in the Governor (Organic Act, Sec. 12; 39 Stat. 951, 955). The Attorney General is one of his assistants; is the head of an executive department; is in charge of the administration of justice in Puerto Rico, and the legal adviser to the Governor, "and shall be responsible for the proper representation of the people of Porto Rico or its duly constituted officers in all actions and proceedings, civil or criminal in the Supreme Court of Porto Rico" (*ib.*, Secs. 13, 14; 39 Stat. at 955, 956). He has represented the government as its counsel in the insular Supreme Court throughout these proceedings. As such counsel he officially filed there the motion or petition above quoted by the Circuit Court of Appeals, officially advising the insular Court that The People of Puerto Rico has exercised the option and "elects to have all the lands in the possession of the respondent"—[corporation] "sold at public auction", and asks an order for the sale. If there can possibly be any question of this having been done in conformity with the wishes of the Governor, "the supreme executive authority", then the action of the Attorney General can readily be formally ratified by the Governor, on the established principles of agency, in like manner as a legislative act by an inferior legislature may be ratified by the superior legislative power. *United States vs. Heinszen & Co.*, 206 U. S. 370; *Rafferty v. Smith, Bell & Co.*, 257 U. S. 226; *Porto Rico Brokerage Co. v. United States*, 80 F. (2d) 521, 524 (C.C.A.-1; certiorari denied, 298 U. S. 671).

ing that the order appointing the Receiver was interlocutory only, and was not an appealable "final decision", is not disposed to insist upon this point, considering it in the public interest that other important questions presented on this record be settled by this Court at this time.

SECOND. The Circuit Court of Appeals was right, in its decisions upon the basic questions of substantive law here involved [R. 178-180; "Third", "Fourth", and "Fifth", *ante*, pp. 7-9] that:

(A) The provision of Act No. 47 giving The People of Puerto Rico a six months option after final judgment of ouster in *quo warranto* proceedings, is valid;

(B) The People's option ran six months from the date of such "final judgment"; that is to say, for six months from May 13, 1940, the date when the mandate of this Court on the former hearing was filed in the insular Supreme Court,—[so that it ran until November 13, 1940]; and, consequently,

(C) The option was in force on the date of the order of the insular court appointing the receiver, July 26, 1940,—and thereafter until November 13;⁷

(D) The Supreme Court of Puerto Rico had jurisdiction in the continuing *quo warranto* proceedings to entertain and to act on any application by the People in the exercise of the option within such six months period; and

(E) The exercise of the option and the application of the provisions of Act No. 47 in this case is not the application of any *ex post facto* penalty.

THIRD. But the Circuit Court of Appeals was clearly wrong

⁷ Within which time it was actually exercised, on August 28, 1940, by the insular government's petition to the insular Supreme Court to order a sale of the property at auction [Opinion, Circuit Court of Appeals, R. 182; *ante*, footnote 6, pp. 11-12].

in holding that the order of the insular Supreme Court appointing the Receiver was "improvidently" issued. In so holding, the Circuit Court overlooked essential factors.

A. The Circuit Court in its discussion of this branch of the case apparently overlooked the fact that the insular Supreme Court, in determining to appoint the Receiver, was interpreting and applying local statutes in the light of its knowledge of local conditions and business practices; that no "federal question" is in any respect involved in this branch of the case; and that it is, therefore, peculiarly a case for the application of the often repeated rule of this Court as to the respect to be accorded to a decision of a local Territorial Supreme Court under such circumstances,—that its decision is not to be overruled unless "inescapably wrong" (*Sancho Bonet, Treasurer v. Texas Co.*, 308 U. S. 463, 471; *Sancho Bonet, Treasurer v. Yabucoa Sugar Co.*, 306 U. S. 505, 509-511). Apparently, so far as appears from the opinion, the Circuit Court of Appeals was not applying this established rule in considering this branch of the case, but was arriving at its decision on this point independently of this rule.

B. In holding that under Sections 27, 28, 29, and 30 of the insular Private Corporations Law (Appendix, *infra*, pp. 41-42), "The implication is unmistakable that whatever the mode of dissolution, the directors automatically succeed as liquidating trustees", and in overruling the contrary interpretation of the insular Supreme Court as to cases like the present where the corporation's charter has been ordered forfeited in *quo warranto* proceedings, the Circuit Court does not make any analysis of the exact language of the insular statutes, and overlooks the fact that in view of the language of the preceding Section 26 relating to "dissolution" ["Whenever in the judgment of the board of directors it shall be deemed advisable"], the apparently broader language of the succeeding Section 27 relating to "All corporations, whether they expire through the limitation contained in articles

of incorporation or are annulled by the legislature, or otherwise dissolved", and of the next succeeding Section 28 relating to "*the dissolution in any manner of a corporation*" [*Italics supplied*], may very well and reasonably be construed, as the insular Supreme Court does construe them in its opinion (R. 123-127),⁸ as meaning to use the words "dissolved", "dissolution", in Sections 27, 28, 30, 32 and 33 of the same "Article VI" entitled "Dissolution", of the Private Corporations Law, in the same sense in which the word "dissolved" is used in the immediately preceding Section 26, which is the first section of that Article.⁹ That is to say that those words, "dissolved", "dissolution", wherever used throughout that Article VI of the statute [Secs. 26-33, inclusive], mean the same thing defined in the first section [Sec. 26]; viz., voluntary dissolution in any manner, "Whenever in the judgment of the board of directors it shall be deemed advisable that a corporation organized under this act shall be dissolved"; but to mean only cases falling within that category.

C. This is emphasized by the fact that the immediately following section [Sec. 27] expressly recognizes two other categories; viz., those cases where (1) the charter expires through limitation contained in the articles of incorpora-

⁸ And as the Court of Civil Appeals of Texas likewise construed very similar statutes of that State, in the case quoted (R. 125-126) by the insular Supreme Court: *San Antonio Gas Co. vs. State*, 22 Texas Civ. App. 118; 54 S.W. 289, 293, 294, construing Art. 682, Sayles Rev. Civ. Stat., in connection with Sec. 3, Art. 1465, *ibid* (writ of error denied by the Texas Supreme Court, 55 S. W. XVI).

⁹ *Confer, Talbott v. Silver Bow County*, 139 U. S. 438, 443-444, that when a word or phrase has once been used in the first [or an earlier] section of a statute with a defined meaning, it is to be presumed that when it is used again in a later section or sections of the same statute, without further definition, it is intended to be used with the same meaning as in the first section.

tion, or where (2) it is *annulled by the Legislature*; as well as where (3) it is "otherwise dissolved" [*that is, "dissolved" in accordance with the preceding Section 26*].

B. The distinction is further pointedly recognized by the fact that the Legislature, in Section 182 of the Code of Civil Procedure [the first section of "Chapter III.—Receivers"],¹⁰ in enumerating the cases in which a receiver may be appointed "*by the court in which an action is pending or has passed to judgment*", provides in its Paragraph "4" [Appendix, *infra*, p. 46] *four distinct categories*; viz.; [1]. "*when a corporation has been dissolved*"; [2] when it "*is insolvent*"; [3] when it is "*in imminent danger of insolvency*"; or [4] when it "*has forfeited its corporate rights*".¹¹

E. It follows that the insular Supreme Court was right in holding (R. 123-127, *supra*)¹² that the Legislature intended the provision for the case where a corporation "*has forfeited its corporate rights*" [Sec. 182 of the Code of Civil Procedure] to refer to something other and different from the "*dissolution*" contemplated in Section 26 and the following sections of the Private Corporations Law; that, therefore, the provision in Sections 27 and 28 and the succeeding sections of the Private Corporations Law concerning the qualified continuance of the corporate existence after "*dissolution*" under that Law, and for the directors continuing to act as "*liquidating trustees*", have no reference at all to a case where [as here] the corporation "*has forfeited its*

¹⁰ Analogous to Section 3, Article 1465, of the Texas Code. *San Antonio Gas Co. vs. State*, *supra*, 22 Tex. Civ. App. 118, 54 S.W. 289, 293-294; *ante*, Foot-note 8, p. 15.

¹¹ As well as the general provision in Paragraph "5" of the same Section, of "*all other cases where receivers have heretofore been appointed by the usages of courts of equity*".

¹² In agreement with the Texas Court in the *San Antonio Gas Co.* case. Confer footnote 8, *ante*, p. 15.

corporate rights"; and that in the latter event a receiver may therefore "be appointed by the court in which an action is pending or has passed to judgment" under Section 182 of the Code of Civil Procedure.

F. As we have said, it is believed plain that this holding of the insular Supreme Court, thus construing these two local statutes together, was right. At any rate it is surely not an unreasonable interpretation of the local laws. It is very surely not "patently erroneous"; nor "inescapably wrong" (*Sancho Bonet, Treasurer v. Texas Co.*, *supra*, 308 U. S. 463, 471); and therefore should not have been disturbed by the Circuit Court of Appeals.

G. The Supreme Court of Puerto Rico was not bound by the decision of the Supreme Court of California cited by the Circuit Court of Appeals (R. 180, 181) interpreting the California statute [*Havemeyer vs. Superior Court*, 84 Cal. 327; 24 Pac. 121]; which the insular Supreme Court likewise cited in its opinion (R. 126) and expressly declined to follow. The statutes of Puerto Rico are not taken quite literally from those of California. There are material differences. Especially there is no provision in the California codes or statutes analogous to that in the amendment made to the Puerto Rico *Quo Warranto* Law by Act No. 47 of 1935, here involved, expressly giving The People of Puerto Rico an option upon the corporate property, upon judgment of forfeiture of the corporate franchise for violation of the laws, as in the case here at bar. Nothing of that kind was before the court in the *Havemeyer* case in California. Moreover, that was a case where the question arose really "after judgment", the prior proceedings having been entirely terminated; whereas here the Circuit Court of Appeals agrees with the insular Supreme Court (R. 178-180; *ante*, pp. 7-8) that the *quo warranto* proceedings were not finally terminated by the judgment of forfeiture of the corporate franchise, but were still pending, the parties still before the insular Supreme Court, and sub-

jeet to its jurisdiction; and that it has power in these proceedings to enforce the government option under Act No. 47.

H. In any event, reading the statutes together, the result is that, at the very least, they unquestionably, as the Circuit Court of Appeals itself holds, preserve (R. 181), "to the courts jurisdiction to supplant the statutory trustees upon proper showing by an interested party, agreeably to the usages of courts of equity."

I. There existed in this case ample grounds, agreeably to the usages of the courts of equity, for the intervention of the insular Supreme Court and the appointment of the Receiver. The Circuit Court of Appeals here again overlooks significant factors.

J. Courts of equity intervene and may appoint a receiver to protect and care for property in cases of **abdication by trustees** of their office or duties, and likewise in cases where trustees [or mortgagors or vendors remaining in possession of the property or others in positions of trust or *quasi trust*] **attempt to convey the property to third parties or otherwise to encumber the title, or to evade the jurisdiction of the court.** All of those grounds existed here:

(a) The corporation officers, before the filing of the mandate of this Court in the insular Supreme Court, and, therefore, before the judgment of dissolution had become legally effective there, but while the motion for the appointment of the Receiver made nearly two years earlier on July 30, 1938 (R. 16) was still pending undetermined,—having been held in abeyance during the pendency of the former appeal,—attempted to convey the property to third parties beyond the jurisdiction of the court. [That is to say, to a newly formed partnership composed of those same officers and directors and the stockholders of the corporation themselves, but claiming to take and hold the property in their individual capacities, and not in any way in trust for the corporation, or as liquidating trustees].

(b) Such conveyance (or attempted conveyance) was

not only in defiance of the then pending motion for the appointment of a receiver, and in effect an attempt to evade the jurisdiction of the court while the motion was pending; but it was also an

(c) Abdication, or an attempt to abdicate the trust under which the directors (*whether in their capacity as directors or in the capacity of "liquidating trustees"*) were bound to hold the property to respond to the government's six months option to condemn it or to order its sale at public auction under Act. No. 47 of 1935,—an option which the Circuit Court of Appeals itself expressly holds valid.

K. It is not a sufficient answer to say, as does the Circuit Court of Appeals (R. 182), that *lis pendens* notices were on file; or that (R. 182) the option would still be enforceable in an action against the purchaser, that the purchasers would necessarily take the property subject to the government's rights. *It has never been a sufficient answer to an abdication or breach of trust by encumbering property or attempting to convey it away that there still remained a right of action in the rightful owner to go out and recover it; or to attempt to do so in extended litigation with third parties.*

L. In view of this abdication of their duty by the trustees, the Circuit Court of Appeals was plainly wrong in holding (R. 181-182) that, "The People do not need a receiver to protect the option". At the very least, the decision of the insular Supreme Court, that it was proper to appoint a Receiver under those circumstances, was surely not "inescapably wrong".

M. And there appears to be no real basis for the Circuit Court of Appeals' criticism (R. 175, 181) of the receivership as covering other property besides the "excess acreage" on which that Court says (R. 181) The People held the option. But the statute, Act No. 47, gives the option on all the "real property" of the corporation

(Appendix, *infra*, pp. 44, 45¹³), not simply on "excess acreage".

This is a great sugar mill property,—land, mill and equipment. It had been integrated by the action [wrongful and illegal as it was] of the corporation itself. Under the laws of Puerto Rico the mill and the equipment constitute a part of the realty [the "immovables"], Civil Code, Sec. 263; Appendix, *infra*, pp. 47-48.

This Court will take judicial notice of ordinary business conditions; that it would be destructive of the entire property to separate the land from the equipment, by appointing a receiver to hold the land idle without allowing him to use the equipment or to cultivate the land. In Puerto Rico the land would quickly go back to jungle. Its value as sugar land would very rapidly deteriorate; and the mill and equipment standing idle would be useless, and likewise deteriorate. Respondents themselves have nowhere, either in their Assignment or Errors (R. 131-135) or in their "Statement on Appeal" (R. 141-160), even suggested any criticism of the scope of the receivership order, on this ground. Manifestly, if there was to be a receiver at all, then everyone familiar with the local conditions and the way the sugar business is carried on would agree that the receivership should cover the entire property, and that the property should be kept up as a live business property, until the time comes for its final disposition, however that may be done. The Circuit Court of Appeals' criticism of the width of the receivership, on this score, is not based upon any complaint made by the respondent corporation or its officers; but is, on the contrary, it may be suggested, in itself an apt illustration of the wisdom of the established rule of this Court as to the deference to be accorded to decisions of local Territorial courts of last resort, familiar with local conditions.

¹³ Spanish "*bienes inmuebles*" (Laws of Puerto Rico, Special Session, 1935, pp. 533, 535); *id. est.*, "immovables."

in interpreting and applying local statutes and in the exercise of discretion in local matters.

REASONS FOR GRANTING THE WRIT

This case involves a question of federal law of paramount importance to the Government and the people of Puerto Rico. The decision of the Circuit Court of Appeals is believed to be wrong and to be in conflict with the applicable decisions of this Court, particularly with those in *Sancho Bonet, Treasurer of Puerto Rico vs. Texas Company, supra*, 308 U. S. 463, 3-472, and in *Sancho Bonet, Treasurer vs. Yabucoa Sugar Co., supra*, 306 U. S. 505, 509-511, in overruling a decision of the insular Supreme Court which was surely not "inescapably wrong" nor "patently erroneous"; interpreting and applying local statutes and exercising its sound judicial discretion in the appointment of a receiver under local statutes and in view of the local court's knowledge of local conditions and local business practices. The decision of the Circuit Court of Appeals that The People of Puerto Rico do not have a sufficient interest under the option given them by the local Act No. 47 of 1935 to justify the appointment of the Receiver and "do not need a receiver to protect the option" very seriously interferes with carrying into effect the legislative policy of the Congress and of the Legislature, of which this Court said when this case was here on the former hearing (*People of Puerto Rico v. Rubert Hermanos, Inc.*, 309 U. S. 543, 548):

"This policy was born of the special needs of a congested population largely dependent upon the land for its livelihood. It was enunciated as soon as Congress became responsible for the welfare of the Island's people, was retained against vigorous attempts to modify it, and was reaffirmed when Congress enlarged Puerto Rico's powers of self-government. Surely Congress meant its action to have significance beyond mere empty words. • • We refuse to believe that Congress was bent on the elaborate futility of a *brutum fulmen*."

It is, therefore, respectfully requested that this petition for a writ of certiorari be granted.

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BRIEF IN SUPPORT OF PETITION

Opinions Below

The opinion of the Supreme Court of Puerto Rico, July 26, 1940 (R. 120-127); is not yet officially reported. The opinion of the Circuit Court of Appeals, March 31, 1941 (R. 170-182) has not yet appeared in the Federal Reporter.

The earlier opinion of the insular Supreme Court, upon which the judgment of forfeiture of the corporation charter was entered July 30, 1938, is found on pages 285 to 304 of the transcript of the record filed in this Court in case No. 582 here at the October Term, 1939, and is officially reported in 53 P. R. Dec. 779 (*Spanish edition, Advance Sheets*), but has not yet appeared in the English edition of the Puerto Rico Reports. The opinion of the Circuit Court of Appeals, September 27, 1939, upon the appeal from that earlier judgment (*majority and minority opinions*) is reported in 106 F. (2d) 754. The opinion of this Court reversing the Circuit Court of Appeals, March 25, 1940, is reported as *Puerto Rico vs. Rubert Hermanos, Inc.*, 309 U. S. 543.

Jurisdiction

The jurisdiction of this Court is invoked under Sec-

tion 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 239, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered March 31, 1941 (R. 183).

Questions Presented

The questions presented are stated in the Petition (*ante*, pp. 1-2).

Statutes Involved

Primarily these are:

(1) The provisions of Sections 2 and 6 of the *Quo Warranto* Law of Puerto Rico as amended by Sections 1 and 2 of Act No. 47 of the Special Session of 1935 of the Legislature of Puerto Rico, concerning the six months option thereby given the People of Puerto Rico, upon judgment of forfeiture in *quo warranto* proceedings against a corporation found guilty of unlawfully holding real estate, to condemn¹⁴ the property or to order it sold at public auction.

(2) The provisions of Article VI, "Dissolution" (Sections 26-33), of the Private Corporations Law of Puerto Rico.

(3) The provisions of Section 182, Chapter III, "Receivers" of Title VIII of the Code of Civil Procedure of Puerto Rico.

(4) The definition of real property, "immovables", in Section 263, in Chapter I, Title I, of "Book Second" of the Civil Code of Puerto Rico.

These, with other pertinent statutory provisions, are in the Appendix, *infra*, pp. 29-48.

Statement

A statement of the case is in the Petition (*ante*, pp. 2-6).

¹⁴ "Confiscate", but only upon payment of compensation; as in ordinary condemnation proceedings. *Confer* foot-note 2, *ante*, p. 4.

Specification of Errors To Be Urged

These are indicated under the headings "Questions Presented" and "Petitioner's Position" in the Petition (*ante*, pp. 1-2 and 12-21).

Summary of Argument

The gist of the argument is contained in the Petition under the heading "Petitioner's Position" (*ante*, pp. 12-21), and is outlined in the "Subject-Index" preceding the Petition (*ante*, p. i).

ARGUMENT

The gist of the argument as stated in the Petition ("Petitioner's Position," *ante*, pp. 12-21) is not here repeated. What here follows relates to some of the specific points in it.

POINT I

The insular Supreme Court was clearly right in holding that Article VI, "Dissolution", Sections 26-33, of the Private Corporations Law of Puerto Rico has no reference to the forfeiture of corporate charters in *quo warranto* proceedings.

A. This holding of the insular Supreme Court (R. 123-126) is clearly supported by the cases there cited, as well as by an analysis of the phraseology of the statutes (*Confer*, "Petitioner's Position", Petition, *ante*, pp. 14-18).

B. Under Subdivision 5 of Section 182 of the Code of Civil Procedure of Puerto Rico (Appendix, *infra*, p. 46) the insular Court possessed the "*inherent power*", in accordance with "*the usages of courts of equity*", to appoint the Receiver *on its own motion*, to protect the property and preserve the rights of all the interested parties [including The People of Puerto Rico under its statutory option].

An almost identical statute has been so construed in Idaho and in Montana. *Gibbs vs. Morgan*, 9 Idaho 100, 111-114, 112 (72 Pac. 733, 737), under an almost identical provision of Subdivision 6 of Section 4329 of the Revised

Statutes of Idaho; citing and following the decision of the Supreme Court of Montana "under a statute identical with Subd. 6 of Idaho Sec. 4329" in *State vs. Second Judicial Circuit*, 15 Mont. 324 [39 Pac. 316; 48 Am. State Rep. 682; 27 L. R. A. 392].

POINT II

The officers and directors of the corporation abdicated their trust.

A. This is true, whether they are to be viewed in the light of directors and officers of the corporation, or as "liquidating trustees".

B. They themselves reveal that after the former decision of this Court, May 25, 1940, and before this Court's mandate could reach the insular Supreme Court, and while (1) the motion for the appointment of a receiver which had been made in the insular Supreme Court on July 30, 1938 (R. 16-17, the same day that the original judgment of forfeiture had been entered in that court) was still pending undetermined,—having been held in abeyance there (R. 17) awaiting the decision of the appeal from that judgment,—and also (2) while the property of the corporation in their control, in their trust capacity as its officers and directors, was subject to the statutory option under Act 47, definitely fixed by this Court's affirmance on March 25, 1940 of the insular Court's judgment of forfeiture,—they abdicated their trust by conveying [or attempting to convey] the entire property, free and clear of the trust, to third parties,—that is to say, to themselves as the members of a "partnership" which they formed for that purpose, [Opinion, C.C.A., R. 175; ante, p. 5],—and thereby attempted to repudiate their duties as trustees, and to take the trust property for themselves.

C. It is immaterial whether at that time they considered themselves, or attempted to act, as officers and directors of the corporation, or as "liquidating trustees". In either event their trust capacity was the same. They were bound to hold the property subject, first, to the juris-

diction of the court in the pending proceeding, and, particularly, during the pendency of the undecided motion for a receiver; and, *second*, subject to the statutory option given by Act No. 47 [which the Circuit Court of Appeals agrees with the insular Supreme Court was a valid existing option].

D. That statutory option bound the officers and the directors of the corporation just as much as though it had been granted by a deed or other voluntary instrument executed by the officers upon the authority or direction of the directors themselves. Under the statutory option the government was in substantially the same position as a vendee of the property, so far as the trust relation of the corporation's officers [and of its "liquidating trustees", if they ever actually became such] was concerned.

POINT III

Abdication of the trust is ground for the appointment of a Receiver.

A. This is too well established to require citation of authorities. A vendee, mortgagee, or other *cestui que trust* is not bound to fold his hands and see the trustee abdicate his trust, or convey the trust property away [or attempt to do so], and simply be remitted to his action for damages, or his attempt to recover the property from third parties in extended, and probably costly, litigation.¹⁵

B. The People of Puerto Rico, under its statutory option, had the same right here. It is manifest that to offer the land for sale at auction, as the Circuit Court of Appeals suggests might be done (R. 182) while it remained in

¹⁵ *Confer*, for example, where the officers and directors have, in effect, tried to save the property for themselves [*Consol. Tank Line Co. vs. Kansas City Varnish Co.*, 43 Fed. 204; 205-206]; or where trustees have accepted another inconsistent trust [*Talbot vs. Scott*, 4 Kay & J. (70 Eng. Rep. 139, 140); *Wood, V.C.*]

the hands of the so-called purchasers to whom these trustees had wrongfully attempted to convey it [or of their possible grantees, immediate or remote], would not possibly yield any reasonable prospect of getting a fair price bid on the sale. A purchaser would not be expected to bid a really fair price, simply to buy a law suit. The insular Supreme Court was right, clearly, in saying (R. 121-122):

"It would be anomalous if this court, after having found defendant guilty of having violated the Organic Law, the Corporation Law and its own articles of incorporation, and after having imposed the payment of a fine, and decreed the forfeiture of its articles of incorporation and the dissolution and liquidation, should find itself obligated, for lack of jurisdiction, to cross its arms, leaving the stockholders and directors of such defendant, the real guilty parties of such violations, in complete freedom of action to comply with the decree of this court as and when they might wish."

CONCLUSION

The decision of the Insular Supreme Court ordering the appointment of the Receiver was right. The Circuit Court of Appeals was in error in disturbing this order made by the insular Supreme Court in the exercise of its discretion and its interpretation and application of local Territorial statutes. The writ of certiorari should be granted and the judgment of the Circuit Court of Appeals should be reversed in so far as it finds that the Receiver was "improvidently" appointed, and the order of the insular Supreme Court appointing the Receiver should be affirmed.

Respectfully submitted,

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Of Counsel.*

APPENDIX

APPENDIX

CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTION:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. (Art. IV, Sec. 3, Cl. 2.)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land. (Art. VI, Cl. 2.)

No person shall be * * * ; nor be deprived of life, liberty, or property, without due process of law. (Fifth Amendment.)

FEDERAL STATUTES:

(1) The former Organic Act for Puerto Rico, the "Foraker Act" of April 12, 1900, c. 191, 31 Stat. 77 *et seq.*, provided:

Sec. 27. That all local legislative powers hereby granted shall be vested in a legislative assembly * * * designated "The legislative assembly of Porto Rico".

Sec. 32. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including * * * the power to alter, amend, modify, and repeal any and all laws and ordinances of every character now in force in Porto Rico, or any municipality or district thereof, not inconsistent with the provisions hereof.

Sec. 33. That the judicial power shall be vested in the courts and tribunals of Porto Rico as already established and now in operation, including municipal courts, under and by virtue of General Orders, Numbered One hundred and eighteen, as promulgated by Brigadier-General Davis, United States Volunteers, August sixteenth, eighteen hundred and ninety-nine, and including also the police courts established by General Orders, Numbered One hundred and ninety-five promulgated November twenty-ninth, eighteen hundred and ninety-nine, by Brigadier-

General Davis, United States Volunteers, and the laws and ordinances of Porto Rico and the municipalities thereof in force, so far as the same are not in conflict herewith, all which courts and tribunals are hereby continued. The jurisdiction of said courts and the form of procedure in them, and the various officials and attaches thereof, respectively, shall be the same as defined and prescribed in and by said laws and ordinances, and said General Orders, Numbered One hundred and eighteen, and One hundred and ninety-five, until otherwise provided by law: *Provided, however,* That the chief justice and associate justices of the supreme court and the marshal thereof shall be appointed by the President, by and with the advice and consent of the Senate, and the judges of the district courts shall be appointed by the governor, by and with the advice and consent of the executive council, and all other officials and attaches of all the other courts shall be chosen as may be directed by the legislative assembly, which shall have authority to legislate from time to time as it may see fit with respect to said courts, and any others they may deem it advisable to establish, their organization, the number of judges and officials and attaches for each, their jurisdiction, their procedure, and all other matters affecting them.

(2) General Orders, No. 118, as promulgated by Brigadier-General Davis, Military Governor of Puerto Rico, August 16, 1899, provided:

General Orders,
No. 118.

Headquarters Department of Porto Rico.
San Juan, August 16, 1899.

Upon the recommendation of the Judicial Board, the following reorganization and functions of the Judiciary of this Island were approved on August 10th, 1899, and are published for the information and guidance of all concerned:

1. The organization and functions of the Courts of Justice of this Island will, from the 10th inst. undergo reforms in accordance with the following dispositions:

2. There shall be a Supreme Court of Justice with fixed residence in the city of San Juan, composed of a Chief Justice and four Associate Justices who jointly will constitute a Judicial Bench for all civil and criminal business; the court shall also have a prosecuting attorney, one Secretary, two court clerks, one file clerk and taxer of costs, six clerks, one janitor and two Bailiffs.

3. The island is divided into five judicial Districts

By command of Brigadier-General Davis:

W. P. Hall,

Adjutant General.

(3) Section 3 of Joint Resolution No. 23, approved May 1, 1900, provides in pertinent part (31 Stat. 715, 716; 48 U. S. Code):

Sec. 3. * * * No corporation shall be authorized to conduct the business of buying and selling real estate or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purpose for which it was created, and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land; and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture. Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title. Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable. (*Emphasis supplied*).

(4) The present Organic Act for Puerto Rico, the "Jones Law", Act of March 2, 1917, c. 145, 39 Stat. 951 *et seq.*, provides:

Sec. 2. That no law shall be enacted in Puerto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any

person therein the equal protection of the laws. . . .

That no law impairing the obligation of contracts shall be enacted. . . .

That no *ex post facto* law or bill of attainder shall be enacted.

Private property shall not be taken or damaged for public use except upon payment of just compensation ascertained in the manner provided by law. . . .

Sec. 9. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States, except the internal revenue laws.

Sec. 23. That the Governor of Puerto Rico, within sixty days after the end of each session of the Legislature, shall transmit to the executive department of the Government of the United States, to be designated as herein provided for, which shall in turn transmit the same to the Congress of the United States, copies of all laws enacted during the session.

Sec. 25. That all local legislative powers in Puerto Rico, except as herein otherwise provided, shall be vested in a Legislature . . . designated "the Legislature of Puerto Rico".

Sec. 34. That . . . All laws enacted by the Legislature of Puerto Rico shall be reported to the Congress of the United States, as provided in section twenty-three of this Act, which hereby reserves the power and authority to annul the same. . . .

No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length.

Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power

to create, consolidate, and reorganize the municipalities so far as may be necessary, and to provide and repeal laws and ordinances therefor; also the power to alter, amend, modify, or repeal any or all laws and ordinances of every character now in force in Porto Rico or municipality or district thereof, in so far as such alteration, amendment, modification, or repeal may be consistent with the provisions of this Act.

Sec. 39 [2d Par.] That nothing in this Act contained shall be so construed as to abrogate or in any manner impair or affect the provision contained in section three of the joint resolution approved May first, nineteen hundred, with respect to the buying, selling, or holding of real estate: That the Governor of Puerto Rico shall cause to have made and submitted to Congress at the session beginning the first Monday in December, nineteen hundred and seventeen, a report of all the real estate used for the purposes of agriculture and held either directly or indirectly by corporations, partnerships, or individuals in holdings in excess of five hundred acres.

Sec. 40. That the judicial power shall be vested in the courts and tribunals now established and in operation under and by virtue of existing laws. The jurisdiction of said courts and the form of procedure in them, and the various officers and attaches thereof, shall also continue to be as now provided until otherwise provided by law; *Provided*, however, That the Chief Justice and the Associate Justices of the Supreme Court shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and the Legislature of Puerto Rico shall have authority, from time to time as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico.

Sec. 57. That the laws and ordinances of Puerto Rico now in force shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided for Puerto Rico or by Act of Congress of the United States; and such legislative

authority shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law or ordinance, civil or criminal, continued in force by this Act as it may from time to time see fit.

PUERTO RICO:

(1) The "Act Establishing Quo Warranto Proceedings", approved March 1, 1902 ("Rev. Stats. and Codes of Porto Rico", 1902, Pars. 779-787, pp. 283-284; Comp. of Rev. Stats. and Codes of 1911, Pars. 1319-1327, pp. 268-269), as originally enacted, provided in pertinent part:

Sec. 2. [Par. 780, Rev. of 1902; Par. 1320, Rev. of 1911]. That in case . . . any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation or exercises rights not conferred by law: The Attorney General or any Fiscal of the respective District Courts, either of his own accord or at the instance of any individual relator, may present a petition to the District Court of competent jurisdiction, for leave to file an information in the nature of "Quo Warranto" in the name of the People of Porto Rico and if such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition, and order the information to be filed, and process to issue.

Sec. 6. [Par. 784, Rev. of 1902; Par. 1324, Rev. of 1911]. In case any person or corporation against whom any such petition is filed, or adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise,¹⁶ and fine such person or corporation for usurping, intruding into, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecutions: *Provided*, that instead of judgment of ouster from a franchise, the court may fine the person or corpora-

¹⁶ The "Rev. Stats. and Codes" of 1902 (Par. 784, p. 283, last line at the bottom of the page) says "is" [its] "franchise".

tion found guilty in any sum not exceeding five thousand dollars for each offense.¹⁷

(2) **"An Act Establishing The Supreme Court Of Porto Rico As a Court Of Appeals"**, approved March 12, 1903 (Laws of 1903, p. 59; Comp. of Rev. Stats. and Codes of 1911, Par. 1141, p. 241) provides in pertinent part:

Section 1.—That the Supreme Court of Porto Rico shall hereafter be a Court of Appeals and not a Court of Cassation. In its deliberations and decisions, in all cases, civil or criminal, said court shall not be confined to the errors in proceeding (procedure) or of law only, as they are pointed out, alleged or saved by the respective parties to the suit, or as set fourth (forth) in their briefs and exceptions, but in furtherance of justice, the court may also take cognizance of all the facts and proceedings in the case as they appear in the record, and likewise consider the merits thereof, so as to promote justice and right and to prevent injustice and delay.

Section 2.—All the Sections of the Law of Civil Procedure establishing proceedings for appeals on cassation are hereby repealed.

(3) **"An Act To Confer Original Jurisdiction On The Supreme Court Of Porto Rico For The Trial And Adjudication Of Certain Property Claimed By The Roman Catholic Church in Porto Rico"**, approved March 10, 1904 (Laws of 1904, pp. 134-135) provided in pertinent part:

Section 1.—Original jurisdiction is hereby conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing, or which may arise, between the Roman Catholic

¹⁷By Act No. 37, April 24, 1931 (Laws of 1931, pp. 354-356), Section 6 was amended by inserting a second *proviso* requiring any defendant against whom a judgment has been rendered declaring him "to have usurped any public office or to be unlawfully performing the duties thereof", "immediately" to "retire from said office and cease performing the duties thereof."

Church in Porto Rico and the People of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

Section 3.—The Supreme Court, for the purpose of such trial and adjudication, shall have the right to issue process for witnesses and to receive and hear testimony, and the procedure in said court shall be the same, as near as may be, as that prescribed for the District Courts of Porto Rico in civil cases, and the Supreme Court shall have full power to enter any and all orders and decrees that may be necessary to a final and full adjudication

Section 5.—Original jurisdiction is hereby also conferred on the Supreme Court of Porto Rico for the trial and adjudication of all questions now existing, or which may arise, between the Roman Catholic Church in Porto Rico and any municipality of Porto Rico, affecting property rights, whether real or personal or mixed, claimed by either party.

[MEMO.—The validity of this Act of March 10, 1904, conferring original jurisdiction on the insular Supreme Court for the purposes designated in the Act, was sustained by the United States Supreme Court in *Ponce vs. Roman Catholic Apostolic Church*, 210 U. S. 296, 303-308].

(4) Act No. 30, **An Act to establish a law of private corporations**, approved March 9, 1911; Pars. 407, *et seq.*, Comp. of Rev. Stats. and Codes of Puerto Rico, 1911, pp. 89-90 [Revision and substantial reenactment of "An Act Regarding Corporations", Laws of 1902, pp. 258 *et seq.*; Rev. Stats. and Codes of 1902, Civil Code, Title II, Secs. 32 *et seq.*, pp. 759 *et seq.*]

Article I. Organization of corporations and revocation of incorporation.

Section 1. Private corporations may be organized by voluntary association of three or more persons, for the purposes and in the manner designated hereunder.

Sec. 2. The object or subjects of corporations organized under this act, may be:

1. The establishment of mercantile or industrial enterprises, which shall be operated and developed

under all forms and within all licit combinations which human intelligence and activity may suggest or permit, without any other limitation than those imposed by the statutes of the United States and the laws of Porto Rico.

2. The establishment of building enterprises for the construction of public and private buildings.

Sec. 3. Every corporation has power.

1. To have succession by its corporate name in perpetuity or for the period mentioned in its articles of incorporation.

2. To sue or to be sued in any court.

3. To have and use a seal, which it may alter at will.

4. To acquire and to hold in any legal manner and to transfer such property, both real and personal as the purposes expressed in the articles of incorporation may require, and to mortgage such property with its franchises: *Provided, however,* That the power of any agricultural corporation [The Act of 1902 reads "any corporation", omitting the word "agricultural". Rev. Stats. & Codes of 1902, *supra*, Civil Code, Sec. 32—(4), p. 759] organized under this act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States, of May first, nineteen hundred.

5. To appoint the officers and agents required by the business of the corporation and to make them reasonable compensation.

6. To make by-laws as to the number of directors, as to the management, regulation and government of its property and affairs and the transfer of its stock subject to the provisions of this act.

7. To dissolve, either voluntarily or by operation of law and in accordance with the provisions of this act.

8. To possess and exercise, subject to the restrictions and liabilities contained in this act and in the Civil Code and its articles of incorporation such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: *Provided,* That the same are not inappropriate to or inconsistent with such

articles of incorporation or with the provisions of this act and of the Civil Code.

Sec. 4. No corporation formed under this act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section. Neither shall any such corporation transact any banking business in conflict with or opposition to the prescriptions of the statutes of the United States concerning banks.

Sec. 5. Any corporation organized under this Act may be dissolved at the pleasure of the Legislative Assembly who may also, at its pleasure, alter, suspend or repeal its articles of incorporation or any addition or amendment made to the same. Any amendment or repealing act hereafter enacted by the Legislative Assembly shall be binding upon the corporations organized under this act. Such amendment or repeal, however, shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred by it or them. This title and all amendments thereto shall be deemed a part of the charter of every corporation formed hereunder, except so far as the same are inappropriate and inapplicable to the object of such corporation.

Article II. *Formation, Alteration and Dissolution of Corporations.*

Sec. 6. Articles or Incorporation.—That on executing, acknowledging and filing articles of incorporation, in accordance with the next section of this act, three or more persons of full legal capacity may organize a corporation for any lawful purpose or purposes, and any such corporation may conduct a business in Porto Rico and the United States, or any foreign country, and may hold, acquire, mortgage and transfer real or personal property, or maintain one or more offices outside of the Island of Porto Rico, provided such powers are included in the objects mentioned in the certificate of incorporation: *Provided, however,* That it shall not be lawful to organize under this chapter any bank, savings bank, building or loan association, or insurance company: *Provided, further; however:* That the charter of every railroad company, telegraph company, tele-

phone company, canal company, electric light company, turnpike company, or any other company requiring the exercise of the right of eminent domain or any public-service corporation, shall be subject to amendment, alteration or repeal by the Legislative Assembly of Porto Rico, and the charters of such corporations shall expressly so provide; and all such corporations shall be subject to effective regulation, as now or hereafter may be provided by law.

The right and power to purchase, construct, lease and operate railroads, street railways, and the business of developing, transmitting and distributing electricity to the public and private consumers, and any other lawful business incident to, connected with, or which shall promote the main business of said corporation, may be included in one charter.

Sec. 7. The articles of incorporation must be subscribed by each of the incorporators and must be acknowledged before a notary or other officer authorized to take and certify acknowledgements. They shall set forth:

1. The name of the corporation; but no name shall be assumed already in use by any other corporation, or so nearly similar thereto as to lead to confusion or uncertainty.

2. The location including the town or city, street and number; if there be any, of its principal office in the Island of Porto Rico.

3. The period, if any, limited for the duration of the corporation.

4. The object or objects for which the corporation is formed.

5. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars; the number of shares into which the same is divided, and the par value of each share, and the amount of paid-in capital, with which it shall commence business, which shall not be less than one thousand dollars.

6. The names and post-office addresses of the incorporators and the number of shares subscribed for by each and the amount of their subscription paid in by each.

7. Any provisions which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the corporation, or for creating, defining, limiting and regulating the powers of the corporation directors or of the stockholders, provided that such provision or provisions shall be consistent with this act.

Article VI.—*Dissolution*

(432). Sec. 26. Whenever in the judgment of the board of directors it shall be deemed advisable that a corporation organized under this act shall be dissolved, the directors within ten days after the adoption of a resolution to that effect by a majority of them at any meeting called for that purpose, of which meeting each director shall have received at least three days' notice, shall cause notice of the adoption of such a resolution to be mailed to each stockholder residing in Porto Rico or in the United States, and also beginning within the said ten days cause a like notice to be published in a newspaper of the Island of Porto Rico four weeks successively, at least once a week, next preceding the time appointed for the same, of a meeting of the stockholders to take action upon a resolution so adopted by the board of directors, which meeting shall be held between the hours of 10 o'clock in the forenoon and 3 o'clock in the afternoon of the day so named, and may on the day so appointed be adjourned by the consent of a majority in interest of the stockholders present from time to time for not less than eight days at any one time, of which adjourned meeting, notice in the said newspaper shall be given. If at any such meeting two-thirds in interest of all stockholders shall consent that a dissolution shall take place and shall signify their consent in writing, such consent, together with a list of the names and residences of the directors and officers certified by the president and secretary or treasurer, shall be filed in the office of the Secretary of Porto Rico, who, on being satisfied by due proof that the requirements have been complied with, shall issue a certificate that such consent has been filed, and the board of directors shall cause such certificate to be published four weeks successively, at

least once a week in a newspaper published in the Island of Porto Rico, and upon filing in the office of the Secretary of Porto Rico of an affidavit that said certificate has been so published, the corporation shall be dissolved and the board of directors shall proceed to liquidate the business and affairs of such corporation. Whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, and the Secretary of Porto Rico shall forthwith issue a certificate of dissolution on filing such consent in his office, which certificate shall be published as above provided.

(433). Sec. 27.—*Corporate existence pending dissolution.* All corporations, whether they expire through the limitation contained in articles of incorporation or are annulled by the Legislature, or otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital; but not for the purpose of continuing the business for which they were established.

(434). Sec. 28.—*Directors as trustees pending dissolution.*—Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, so far as such moneys and property shall suffice. They shall have power to meet and to act under the bylaws of the corporation, and, under regulations to be made by a majority of the said trustees, to prescribe the terms and conditions of the sale of such property, or may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of the said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequently thereto, the surviving directors or director shall be the trustees or trustee thereof, as the case may be, with full power to settle the affairs, collect the out-

standing debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this Act relative to the winding up of the affairs of such corporation and to the distribution of its assets. (As amended by Section 12 of Act No. 24, approved April 13, 1916; Laws of 1916, p. 73).

(435) Sec. 29.—*Powers and liabilities of Trustees in Liquidation.* The directors constituted trustees as aforesaid shall have power to sue for and recover the aforesaid debts and property by the name of the corporation and shall be suable by the same name, or in their own names or individual capacities for the debts owing by such corporation, and shall be jointly and severally responsible for such debts to the amount of the money and property of the corporation which shall come to their hands or possession as such trustees.

(436) Sec. 30.—*Judicial appointment of liquidators.* When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Porto Rico is situated, on application of any creditor or stockholder, may at any time either continue the directors as trustees as aforesaid, or appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof, to collect the debts and property due and belonging to the corporation, with power to prosecute and defend in the name of the corporation, or otherwise, all suits necessary or appropriate for the purposes aforesaid, or to appoint an agent or agents under them, or to do other acts that might be done by such corporation if in being that may be necessary for the final settlement of its unfinished business, and the powers of such trustees or receivers may be continued so long as the courts shall think necessary for such purpose.

(437) Sec. 31. *Distribution of Assets by Trustees or Liquidators.* The said trustees or liquidators shall pay ratably, so far as its assets shall enable them.

all the creditors for the corporation who prove their debts in the manner directed by the court or by the law of civil procedure. If any balance remain after the payment of such debts and necessary expenses, the same shall be distributed among the stockholders.

(438) Sec. 32. *Pending Suits Not Affected by Dissolution.* Any suit now pending or hereafter to be begun against any corporation which may become dissolved before final judgment; shall not lapse by reason of such dissolution; but no judgment shall be entered in any such action except upon notice to the trustees or liquidators of the corporation.

(439) Sec. 33. *Final Decree in Liquidation Proceedings.* A copy of every judicial decree or judgment in proceedings for liquidation had after the dissolution of a corporation shall be filed by the clerk of the court in the office of the Secretary of Porto Rico and a minute thereof shall be made by the Secretary on the articles of incorporation and in the index thereof.

(5) *Acts Nos. 33 and 47; Special Session, 1935.*

Act No. 33, approved July 22, 1935, entitled

o "An Act To Confer Upon The Supreme Court of Puerto Rico Exclusive Original Jurisdiction In *Quo Warranto* Proceedings That The Government Of Puerto Rico May Institute For Violations Of The Provisions Of Section 752, Title 48, United States Code, And For Other Purposes",

provides in pertinent part (Laws of 1935, Special Session, p. 418):

Section 1.—There is hereby conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction to take cognizance of all *Quo Warranto* proceedings that the Government of Puerto Rico may hereafter institute for violations of the provisions of Section 752, Title 48, United States Code, and for that purpose it is provided that the violation of said provisions shall constitute sufficient cause to institute a proceeding of the nature of *Quo Warranto*.

Act No. 47, approved August 7, 1935, Laws of 1935, Special Session, pp. 530-536, amends Sections 2 and 6 of the *Quo Warranto* Law of March 1, 1902 [*ante*, pp. 34-35; Sec. 6 already amended by the Act of 1931, Footnote 17, *ante*,

p. 35, amendment concerning public offices, immaterial here], so as to read in/pertinent parts:

Section 2.—In case any person should usurp, or unlawfully hold or execute any public office * * * , or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises rights not conferred by law, the Attorney General, or any prosecuting attorney of the respective district court, either on his own initiative or at the instance of another person, may file before any district court of Puerto Rico a petition for" [leave to file]¹⁷ "an information in the nature of *Quo Warranto* in the name of The People of Puerto Rico; or whenever any corporation, by itself or through any other subsidiary or affiliated entity or agent, exercises rights, performs acts, or makes contracts in violation of the express provisions of the Organic Act of Puerto Rico or of any of its statutes, the Attorney General or any district attorney, either on his own initiative or at the instance of another person, may file before the Supreme Court of Puerto Rico a petition for" [leave to file]¹⁸ "an information in the nature of *Quo Warranto* in the name of the People of Puerto Rico; and if from the allegations such court shall be satisfied that there is probable ground for the proceeding, the court may grant the petition and order the information accordingly. * * *

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

"In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

Section 6.—In case any person or corporation

¹⁸ Spanish: "una solicitud para que se instruya información de la naturaleza del *quo warranto*".

against whom any such petition is filed, is adjudged guilty, the court may give judgment of ouster against such person or corporation from the office or franchise to which the petition refers, and fine such person or corporation for usurping, intruding in, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the defendant for the costs of the prosecutions; * * * *

Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall, in case the defendant is a domestic corporation, decree the dissolution thereof and the prohibition to continue doing business in the country; and in the case of a foreign corporation, the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.

(6) **Code of Civil Procedure of Puerto Rico (Edition of 1933).**
Section 103.—(426 Cal.)¹⁹ The complaint must contain:

1. The title of the action, the name of the court and district in which the action is brought, and the names of the parties to the action.

¹⁹ The references, here and in other sections of this Code, are to the sections of the California Code of Civil Procedure, upon which the Puerto Rico Code is modelled. See "Rule 1" of Act No. 6, approved March 31, 1933, "Establishing Rules for the Printing of the Code of Civil Procedure of Puerto Rico"; Laws of 1933, p. 194.

2. A statement of the facts constituting the cause of action, in ordinary and concise language.

3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated.

Section 122.—(453 Cal.) In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

Section 142.—(475 Cal.) The court must, in every state of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect.

Chapter III.—Receivers

Section 182.—(564 Cal.) A receiver may be appointed by the court in which an action is pending or has passed to judgment,²⁰ or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or jointly interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

2. After judgment, to carry the judgment into effect.

3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

²⁰ The California Code (Sec. 564) did not contain the words "*or has passed to judgment*". [*Confer Respondents' "Statement on Appeal", R. 157*].

5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

Section 191.—(580 Cal.) The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Section 348.—(1049 Cal.) An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.

(7) Civil Code of Puerto Rico (Edition of 1930).

Section 263.—The following are immovables:

1. Lands, buildings, roads and structures of every kind adherent to the soil.

2. Trees, plants and ungathered fruits, while they are not separated from the land or form an integral part of an immovable.

3. Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated from it without breaking the matter, or causing injury to the object.

4. Statues, reliefs, paintings, or other objects of use or ornament, placed in buildings or on lands or tenements by the owner thereof in such a manner that they become attached permanently to the property.

5. Machinery, vessels, instruments or implements intended by the owner of the tenement for the industry or works that he may carry on in any buildings or upon any land and which tend directly to meet the needs of the said industry, or works.

6. Animal houses, pigeon-houses, bee-hives, fish-ponds or breeding places of a similar nature, when the owner has placed or preserves them with the intention of keeping them attached to the tenement and forming a permanent part thereof.

7. Manures or fertilizers intended for the cultivation of the land, when upon the place where they are to be employed.

8. Mines, quarries and slag lands, while the matter thereof forms part of the beds, and waters, either running or stagnant.

9. Docks and structures which, though floating, are intended by their nature and the object for which they are designed, to remain at a fixed place in any river or lake, or on any shore.

10. Administrative concessions for public works, and servitudes and other real rights, attached to immovables.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1941

No. 96

PEOPLE OF PUERTO RICO,
Petitioner,

VS.

ROBERT HERMANOS, INC., *et al.*,
Respondents.

REPLY BRIEF FOR PETITIONER,
IN REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941

No. 96

PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC., *et al.*,
Respondents

REPLY BRIEF FOR PETITIONER,
IN REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

Respondents make no effective answer to the points stated in our
Petition for Certiorari and Supporting Brief.

OPINIONS BELOW.

As stated in our original Supporting Brief, under the heading "Opinions Below" (P. 22), the opinion of the Supreme Court of Puerto Rico, July 26, 1940 (R. 120-127), is not yet officially reported.

But the opinion of the Circuit Court of Appeals, March 31, 1941 (R. 170-182), is now reported in 118 F. (2d) 752 (Advance Sheets, May 19, 1941).

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FIRST

The insular Supreme Court was clearly right in holding that Article VI, "Dissolution", Sections 26-33, of the Private Corporations Law of Puerto Rico has no reference to the forfeiture of corporate charters in *quo warranto* proceedings. (*Supporting Brief, Point I*, pp. 24-25).

A. Respondents make no direct answer to this point. They make no attempt to reply to the analysis of the insular statutes contained in our statement of the "Petitioner's Position", "Third", "A-H" inclusive (pp. 14-18), in our Petition for Certiorari. Our analysis, there, follows along similar lines to those of the opinion of the insular Supreme Court (R. 124-126), and of the reasoning of the Texas court in *San Antonio Gas Co. v. State*, 22 Texas Civ. App. 118, 54 S. W. 289, 293, 294, quoted by the insular Supreme Court (R. 125-126), and cited by us (*Petition for Certiorari*, notes 8 and 10, pp. 15, 16). Respondents say nothing to shake this reasoning. It is plainly correct; and conclusive. At the very least it certainly is not "patently erroneous", nor "inescapably wrong" (*Sancho Bonet, Treasurer v. Texas Company*, 308 U. S. 463, 471; *Same v. Yabucoa Sugar Co.*, 306 U. S. 505, 509-511); whence it follows that the Circuit Court of Appeals was in error in disturbing this ruling of the insular Supreme Court.

B. As stated, respondents attempt no direct answer to this point. All that they do is to invite attention to the fact that, in a general way (*Brief*, pp. 13-14), the provisions of Article VI of the Corporation Law of Puerto Rico entitled "*Dissolution*" which contains Sections 27, 28, and 29,¹

¹ But which also contains, significantly, as pointed out in our Petition for Certiorari (pp. 14-17, *supra*), Section 26; and also is to be read in connection with the provisions made in Section 182 of the Code of Civil Procedure of Puerto Rico (*Petition for Certiorari, Appendix*, pp. 40-43, 46-47).

are analogous to the statutes of many States intended to provide a mode of disposition for the assets of an expired corporation, in order to avoid the escheat to the State which would otherwise follow under the strict provisions of the ancient common law. We have, of course, no quarrel with that general proposition. The statutes of Puerto Rico, taken all together, including the provisions in Article VI, "Dissolution", of the Corporation Law, taken together with those of Section 182 of the Code of Civil Procedure, serve that purpose.

C. Counsel assert broadly (*Brief*, p. 14):

"The unqualified term 'dissolution' in such statutes has been held in all but one jurisdiction (Texas) to include dissolutions resulting from forfeiture of the corporate franchise."

Counsel, however, cite no authorities in support of this broad assertion. The trouble with it is, plainly, that the phraseology of the statutes of the various States is widely variant. In Texas, for example, as in Puerto Rico, the term "dissolution" is not "unqualified" (to use respondents' phrase); but, on the contrary, is directly qualified by the express provision of Section 26, — the very first section of the chapter on "Dissolution" in the Corporation Law, — by limiting it, as the insular Supreme Court pointed out [and as we point out in our Petition for Certiorari, pp. 14-17, supra], to those cases where the "dissolution" is effected by formal meetings of the directors and the stockholders, and is the result of the initiative of the directors. Such a "dissolution" quite clearly does not include either of the other categories by which the existence of a corporation may be terminated, which are mentioned in other sections of the law; viz., in Sections 27 et seq. of the Corporation Law and in Section 182 of the Code of Civil Procedure; that is to say, by: (a) Expiration through limitation of time contained in the articles of corporation; (b) Annulment

by the Legislature; or (c) Where the corporation "has forfeited its corporate rights". In cases "(a)" and "(b)",— as well as in cases of voluntary "dissolution" under Section 26,—the corporation is continued in existence for certain limited purposes by Section 27 of the Corporation Act (*Appendix to Petition for Certiorari*, p. 41).

But, quite to the contrary, no such provision is made for the case where it "has forfeited its corporate rights". In such a case, by the express provision of paragraph 4 of Section 182 of the Code of Civil Procedure (*Appendix, ibid.*, p. 46), a situation has arisen where, under the provisions of the first general clause of that section,

"A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof".

D. There is nothing contradictory between those provisions of the Corporation Law and of the Code of Civil Procedure. They cover different situations. Neither interferes with the other.²

E. This is all in perfect harmony with the general purpose of the many State statutes to which respondents refer (*Brief*, pp. 13-14, *supra*), to provide a method for the dis-

² *Confer*, further, as to this,—and as to the necessarily implied limitation of the meaning of the word "dissolution", as used in Section 27 and the following sections of the Corporation Law, by its use by the Legislature in the immediately preceding Section 26, the first section of the chapter; *Petition for Certiorari*, pp. 14-17, and notes 8 and 9, p. 15.

But, illustrating the wide variations in State statutes, in California, for example, to the exact contrary, the corresponding section expressly extends the corporate life, for limited purposes in winding up, of: "All corporations, whether they expire by their own limitation, *by forfeiture of existence by order of court*, or are otherwise dissolved" (Civil Code, Sec. 399; Deering's Codes, 1931. *Italics supplied*). The difference is apparent.

tribution of the assets of a corporation whose life has been terminated, and thus to avoid the escheat of its property to the State under the ancient common law rule. *But there is no requirement that the Legislature provide but one single method* by which all assets, in every case of termination of the corporate life for any reason, must necessarily go in one single way. Plainly, the Legislature had the right to provide more than one method to fit different situations; as it did here by providing for the limited continuance of the corporate life in ordinary classes of cases,³ under the guardianship of its former directors as liquidating trustees; but by providing, differently, for the appointment of a receiver to liquidate the assets, in case where the corporation has been adjudged guilty of such acts that it "has forfeited its corporate rights",—and excluding the directors from the management in such cases.⁴ The reasons which might move the Legislature to make such a distinction are not far to seek. No question has been suggested as to the distinction being within the legislative power.

F. The question here is, of course, not as to what other legislatures may have done, or as to the effect of other State statutes, or as to any trend of legislation generally in the different States; but is, on the contrary, specifically *just what did the Legislature of Puerto Rico do*. As the Supreme Court of Illinois said in one of the cases cited by the respondents themselves (*Brief*, p. 14), the case of *Evans v. Illinois Surety Co.*, 298 Ill. 101, 105, quoting the opinion of this Court, by MR. JUSTICE HOLMES, in *Filene Sons Co. v. Weed*, 245 U. S. 597, 601-602:

³ Subject of course to the interposition of a court of equity and the appointment of a receiver whenever the need for it might be indicated in accordance with the established usages of equity.

⁴ Unless of course, in any particular case, the court should see fit to appoint the directors, or one or more of them, as its receivers.

"When a statutory system is administered, the only question for the courts is what the statutes prescribe".

G. At the very least, the insular Supreme Court's construction of Puerto Rico's own local statutes in this regard is surely not so "patently erroneous" nor so "inescapably wrong" as to warrant its reversal by the Circuit Court of Appeals.

SECOND

It follows, necessarily, that neither the former directors nor the so-called "liquidating trustees" had any authority to hold or to administer assets of the corporation, after the mandate of this Court was received by the insular Supreme Court on May 13, 1940, affirming that court's judgment of forfeiture and cancellation of the corporate rights.

The corporate assets had to be administered. It became the express duty of the insular Supreme Court, before which the case was pending, to administer them through its receiver. (Paragraph 4, Section 182, Code of Civil Procedure, *supra*). There was no other method.

THIRD

Both paragraphs 4 and 5 of Section 182 of the Code of Civil Procedure of Puerto Rico (and also sub-paragraphs 2 and 3) are applicable.

A. The first (general) clause of Section 182, together with the pertinent portions of sub-paragraphs 2, 3, 4, and 5,⁵ read:

"A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

"1. In an action * * *

"2. After judgment, to carry the judgment into effect.

⁵ Appendix to Petition for Certiorari, pp. 46-47.

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"3. After judgment, to dispose of the property according to the judgment, or to preserve it"

"4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights,"

"5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity."

B. Clearly, under these statutory provisions it was the duty of the insular Supreme Court, before which the case was pending, to appoint a receiver not only because of the need to administer the assets of the corporation because it had been adjudged that it "has forfeited its corporate rights" [*sub-par. 4*]; but also to "carry the judgment into effect" [*sub-par. 2*], that is, to carry it into effect, including its concomitant statutory option secured to the People of Puerto Rico upon the entry of the judgment, by Act No. 47 of 1935; and "to dispose of the property according to the judgment or to preserve it during the pendency of an appeal" [*sub-par. 3*].

And it was also the court's duty, specifically, "by the usages of courts of equity" [*sub-par. 5*], to appoint the receiver in view of the *abdication of their trust* by the directors (or by them in the guise of so-called "liquidating trustees") in attempting to convey the property away to themselves, ostensibly free from the obligations of their trust and free from the statutory option secured to the People by Act No. 47 of 1935,—as pointed out in our original Petition for Certiorari and Supporting Brief (pp. 18-19 and 26-27).

FOURTH

Respondents' attempt to cloud the power of the court under Section 182 of the Code of Civil Procedure is wholly ineffective.

A. Respondents attempt to escape from the power of the insular Supreme Court to appoint a receiver under Section 182 of the Code of Civil Procedure of Puerto Rico, and par-

ticularly from the general power under sub-paragraph 5 of that section to appoint a receiver:

"5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity",

by asserting (*Brief* pp. 15-16) that paragraphs 4 and 5 of Section 182 of the Puerto Rico Code of Civil Procedure:

"are identical with paragraphs 5 and 7 of Section 564 of the Code of Civil Procedure of California",

and, that therefore, they do not authorize "the appointment of a receiver after judgment". Respondents cite California authorities construing the California code.

B. The trouble with respondents' argument is that they are mistaken in their premise. These sub-paragraphs of the Puerto Rico Code, as well as the corresponding sub-paragraphs of the California Code, are, manifestly, each to be construed in connection with the general clauses at the headings of the respective sections of which they are parts, in their respective codes. While it may be true that, simply taking these sub-paragraphs by themselves and disconnected from the headings of the respective sections in the respective codes, the wording of the sub-paragraphs themselves may be identical in the two codes; nevertheless, *the headings of the sections in the two codes are markedly different.*

Manifestly, the Puerto Rico Legislature in enacting its Code of Civil Procedure was, in a general way, following the California Code as a model. *But it was not slavishly copying it.* It changed it where the Puerto Rican Legislature thought best. This Section 182 furnishes a marked example of such a change. The heading clause of Section 564 of the California Code read:

"A receiver may be appointed by the court in which an action is pending, or by the judge thereof" (*Code*

of Civil Procedure of California, Section 564; Deering's Codes, 1931; same as originally enacted, March 11, 1872).

It will be observed that under that general heading of the section, as it stood in the California code, there was *no provision for appointment of a receiver after a case had passed to judgment*. Under that California provision, therefore, the only instances in which a receiver could be appointed after judgment, under that section, were those specifically covered by subparagraphs 2 and 3. Those two subparagraphs, like the corresponding subparagraphs 2 and 3 of the Puerto Rico Code, expressly provided for appointment of receivers "after judgment". But under the language of the general heading at the top of the section, providing only for power to appoint receivers by a court "in which an action is pending", it was necessarily held by the California courts that no power was given by that section to appoint receivers after the action had been terminated, in any other cases than those expressly covered by such subparagraphs 2 and 3 of the section.

That was the holding, for example, in the case of *Havemeyer v. Superior Court*, 84 Cal. 327, 24 Pac. 121, upon which respondents here rely (*Brief*, p. 14),⁶ and in other cases cited in 22 *California Jurisprudence*, page 451, Sec. 33, upon which respondents likewise rely (*Brief*, p. 16).

C. But the Legislature of Puerto Rico in adopting the substance of this Section 564 of the California Code into Section 182 of the Puerto Rico Code, *changed it very significantly*, by inserting in the initial (general) clause of the section the words

"or has passed to judgment",

⁶The same case which was expressly distinguished by the insular Supreme Court in its opinion in the present case (R. 126) as not in point here. See also *Petition for Certiorari*, p. 17.

so as to make that initial (general) clause of the section read, very differently:

"A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof".

D. It is too clear for argument that this significant change was made by the Puerto Rican Legislature, in adopting this section into the Puerto Rican Code, for the very purpose of broadening the effect of the section, and of getting away from the effect of the California decisions which had construed the California section as not giving power to the California courts to appoint receivers by virtue of it, after the case had passed to judgment; except under sub-paragraphs 2 and 3, expressly relating to cases "after judgment".

E. Nothing can be clearer, therefore, than that **Section 182 of the Puerto Rican Code does, expressly, endow the insular courts with broad power to appoint receivers under each and every one of the sub-paragraphs of the section, both before and after the cause has passed to judgment.** And, therefore, gives the insular Supreme Court full power to make the appointment in the present instance, whether under one or the other of the sub-paragraphs of the section.

FIFTH

In any event, the insular Supreme Court possessed the "inherent power" to appoint a receiver on its own motion to protect the prop-

And in any event, as the Circuit Court of Appeals expressly holds (R. 179; 118 F. (2d) 752, 758), in the present instance the case is still "pending", after this Court's affirmation of the insular Supreme Court's judgment of dissolution of the corporation. That affirmance did not put an end to the proceedings.

erty and preserve the rights of all the interested parties [including the People of Puerto Rico's statutory option] in accordance with "the usages of courts of equity" under sub-division 5 of Section 182 of the Code of Civil Procedure. (Point I-B, pp. 24-25, of our original Supporting Brief.)

Respondents do not attempt to question the soundness of the reasoning of the decisions of the Idaho and Montana courts, under strictly analogous statutes, here cited by us. The court's jurisdiction and power are plain.

SIXTH

The wisdom and necessity of the court's action in appointing a receiver are made plainer by respondents' brief.

A. Respondents do not question what we said (*Petition for Certiorari*, pp. 19-20) as to the necessity,—when a receiver was to be appointed at all,—of the receivership administering and preserving the entire property, as a going concern, pending its final disposition by the court.

Respondents in fact emphasize this (*Brief*, pp. 7, 17), saying, among other things (p. 17):

"It was likewise necessary to protect growing crops, to comply with provisions of contracts for advances and other assistance to colonos and for these and other reasons to continue operating the railroad. Furthermore, a paralyzation of factory operations during the grinding season would occasion a loss of many thousand dollars daily by reason of continuing salaries, wages and overheads. The corporation after final judgment forfeiting its franchise and ordering its immediate dissolution, could no longer continue any of these operations."

B. If the directors had not abdicated their trust by conveying [or attempting to convey] the property to themselves, the court might perhaps well have considered the advisability of appointing the directors themselves, or some of them, to be its receivers; but, manifestly, it could not do

so in view of such abdication and defiance of the court's authority,—done while the motion for a receivership, filed before the former appeal, was still pending undecided,—and done in direct disregard of the statutory option of The People of Puerto Rico.

No question has even been suggested of the receiver chosen by the Court being thoroughly qualified in every way.

C. Respondents' assertion that. (*Brief*, p. 16):

“There was and is no claim that the People of Puerto Rico either owned or had a lien on any of the property of the defendant corporation”;

and that the property (*ibid*, p. 16):

“belonged to the stockholders of the corporation and after the payment of debts of the corporation such property or its proceeds was distributable among the stockholders”;

is very plainly mistaken,—or at least is subject to very great qualification. Plainly, the statutory option on the property, given to The People of Puerto Rico by Act No. 47 of 1935, to have the real property of the company either condemned [“confiscated”, upon payment of the just price], or sold at public auction, constituted a very distinct and very important “interest” in the property, in the nature either of ownership or of a lien, which took precedence of the rights, certainly, of the stockholders,—and possibly, to some extent at least, of the creditors,⁸—which it was the duty of a court of equity to protect; and which, under the circumstances here, the insular Supreme Court was wholly justified in determining could properly be protected only by the appointment of a receiver.

⁸ To the extent perhaps of requiring the marshalling of assets, in case the personal property should not prove sufficient to pay the creditors in full.

D. It was wholly immaterial that, as respondents suggest (*Brief*, pp. 5, 8), the motion for the receiver, as originally filed on July 30, 1938 (R. 16), apparently relied wholly upon the mandatory provisions of Section 182 of the Code of Civil Procedure, and accordingly stated, as the only ground expressly assigned for the motion, the fact of the judgment entered the same day ordering the dissolution of the respondent corporation and decreeing the forfeiture and cancellation of its corporate license, and that (*ib.*, R. 16):

"2. Such dissolution and disposition of the property of the respondent shall be entrusted to a receiver";

and that it was not until the filing of the first brief in support of the motion, on July 5, 1940 [after the judgment of dissolution had been affirmed by this Court and the motion for the receiver accordingly called up for disposition in the insular Supreme Court], that The People of Puerto Rico for the first time expressly assigned as one of the grounds for the receivership the need for protecting The People's statutory option on the property resulting, under Act No. 47 of 1935, from the forfeiture of the corporate franchises (*Complainant's Brief in Support of Motion, etc.*, R. 23, 25-27).

The respondent in its elaborate opposition brief before the insular Supreme Court filed the same day, July 5, 1940 (R. 32-58); undertook to answer this ground, along with the other grounds, for the appointment of a receiver, urged by The People of Puerto Rico, *without making any objection at all that this ground had not been assigned formally in the motion*, but only in the written brief; and the insular court, in its opinion, based its decision partly on this ground (R. 120, 122, *et seq.*).

Manifestly, it was too late, afterwards, for the respondents to contend that, as a matter of local pleading and procedure, this ground and all the grounds should have been

formally assigned, either in the original formal motion for the appointment of the receiver, or in some formal amendment to the motion.

In any event, the motion, setting out the existence of the decree of dissolution and forfeiture of the corporation's assets, and asking for the appointment of a receiver, constituted a sufficient pleading to support the appointment, under the provisions of the Puerto Rico Code of Civil Procedure [Sec. 103, sub-pars. 2 and 3; Sec. 122, and Sec. 142], and particularly of Section 142 that:

"The court must, in every state of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect." [Confer, Brief for the Petitioner, "Fifth," pp. 52-58, 8n the former hearing of this case in this court, *People of Puerto Rico vs. Rubert Hermanos, Inc.*, No. 582, Oct. Term, 1939; the same counsel appearing then as here].

D. Respondents' assertion that the counsel for The People of Puerto Rico have taken inconsistent positions on the former and in the present hearing, with relation to the method of enforcement of the statutory option given by Act No. 47 of 1935 upon the corporation's real property, upon the forfeiture of its corporate franchises in the *quo warranto proceedings*, is shortly and effectively answered by the Circuit Court of Appeals. That Court says (Opinion: R. 174; 118 F. (2d) 752, 756):

"Counsel for the insular government persuaded the courts not to pass on this issue by pointing out, correctly enough, that the People had not asked for confiscation or public sale. Obviously this did not estop the People from subsequently moving for a confiscation or public sale, in accordance with the procedure prescribed in Act No. 47. Appellee has not taken inconsistent positions. The contention of appellants to the contrary is without foundation."

SEVENTH

The frequently declared rule of this Court as to the respect to be accorded to the decisions of Territorial courts of last resort interpreting and applying local statutes and local procedure, applies, in its full force, to the FIRST DECISIONS of those courts upon such local questions.

The rule is not limited in its scope to decisions of those courts which are merely repetitions of former decisions on the same question.

A. Respondents here suggest that full weight should not be accorded to the rulings of the Supreme Court of Puerto Rico in this case upon two of the important questions of interpretation of the local statutes which were decided by it here, viz.: (1) Its decision that Sections 26, 27, 28, 29, and the following sections of the chapter on "Dissolution" of the Private Corporations Law, are not applicable to the administration of the assets of a corporation which has forfeited its corporate rights; and (2) Its decision that, under paragraph 4 of Section 182 of the Code of Civil Procedure of Puerto Rico, the Court has jurisdiction to appoint a receiver for the assets of a corporation which has forfeited its corporate rights:

BECAUSE, as respondents say (*Brief*, p. 11):

"The decision of the Supreme Court of Puerto Rico upon which the order appointing a receiver was based adjudicated FOR THE FIRST TIME",

upon these two questions of local statutory law.

B. Respondents clearly mean to imply that less respect is to be accorded to the decisions of the insular Supreme Court upon these two questions because it was the *first time* that the Court had had occasion to decide them. *But counsel cite no authorities to support their suggestion of any such implied limitation on the rule of this Court in that regard.*

C. No such limitation, either expressed or implied, is found in any of the repeated statements of the rule by this Court. On the contrary, as was emphatically said in *Sancho Bonet, Treasurer vs. Texas Company, supra*, 308 U. S. 463, 470-471:

"For over sixty years this Court has consistently recognized the deference due interpretations of local law by such local courts unless they appeared to be clearly wrong. From *Sweeney v. Lomme*, 22 Wall. 208, decided in 1874, to *Bonet v. Yabucoa Sugar Co., supra* [306 U. S. 505, 509-511], "decided in 1939, repeated admonitions to that effect have been given. That rule is founded on sound policy. * * *

"* * * To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on an appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear and manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous."

D. To say that this rule, thus emphatically and repeatedly stated by this Court, does not apply to *first decisions* by Territorial courts of last resort; but that it is meant to apply only to repetitions by ~~the~~ courts of rulings previously made; would be to say that it means nothing at all; to reduce it to absurdity; to a mere *brutum fulmen*.

That was not the intention of this Court.

CONCLUSION

As stated in the "Conclusion" of our original Supporting Brief here (p. 27) in support of the Petition for Cer-

tionari, the decision of the insular Supreme Court ordering the appointment of the receiver was right. The Circuit Court of Appeals was in error in disturbing that order made by the insular Supreme Court in the exercise of its discretion and pursuant to its interpretation and application of local Territorial statutes. Certiorari should issue; the judgment of the Circuit Court of Appeals should be reversed in so far as it finds that the receiver was "improvidently" appointed; and the order of the insular Supreme Court appointing the receiver should be affirmed.

Respectfully submitted, . . .

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

GEORGE A. MALCOLM,
Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
*Solicitor for the Department of the Interior,
Of Counsel.*

IN THE
Supreme Court of the United States

OCTOBER TERM, 1941

No. 96

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RYBERT HERMANOS, INC., *et al.*,
Respondents.

ORAL ARGUMENT

February 6th and February 9th, 1942

WILLIAM CATRON RIGBY,
Attorney for Petitioner.

GEORGE A. MALCOLM,
Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
*Solicitor for the Department of the Interior,
Of Counsel.*

IN THE
Supreme Court of the United States

OCTOBER TERM, 1941

No. 96

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC., *et al.*,
Respondents.

WASHINGTON, D. C.,
Friday, February 6, 1942.

The above-entitled matter came on for oral argument before the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States, at 4:27 o'clock p.m.

APPEARANCES:

On behalf of the Petitioner,

THE PEOPLE OF PUERTO RICO:

WILLIAM CATTRON RIGBY, Esq. pp. 2-30

On behalf of the Respondent,

RUBERT HERMANOS, INC., *et al.*:

HENRI BROWN, Esq. pp. 31-52

PROCEEDINGS

THE CHIEF JUSTICE: No. 96, The People of Puerto Rico against Rubert Hermanos, Incorporated.

THE CLERK: Counsel are present.

**Argument of Colonel William Catron Rigby, on Behalf of the
Petitioner, the People of Puerto Rico.**

MR. RIGBY: If the Court please, do you desire that we begin, for three minutes?

THE CHIEF JUSTICE: Every minute counts. We cannot afford to miss one.

MR. RIGBY: As this Court is doubtless aware, this is the second hearing in this Court in this same 500-acre case, so-called, from Puerto Rico; in which the first decision, was rendered by this Court on March 25, 1940.

In that decision the Court upheld the validity of the acts of the Legislature of Puerto Rico in 1935, Acts Nos. 33 and 47, enacted for the purpose of implementing, as it has been said, the Joint Resolution of the Congress of 1900 forbidding agricultural corporations in Puerto Rico to hold and employ for agricultural purposes more than 500 acres of land, and requiring that restriction to be put into the charter of every corporation chartered in Puerto Rico for agricultural purposes.

The Supreme Court of Puerto Rico had on July 30, 1938, upon the complaint of the People of Puerto Rico, found that this corporation was guilty of violation of that provision put into its own articles of incorporation, holding persistently something over 12,000 acres of land, and had ordered the forfeiture and cancellation of its charter and the imposition of a \$3,000 fine and costs.

On the same date on which that judgment was entered by the Supreme Court of Puerto Rico, a motion was made on behalf of the People of Puerto Rico for the appointment of a receiver for the assets of the corporation, on the ground that upon the entry of such a judgment as was framed, as the motion was framed, a receiver should be appointed; and pointing out particularly the provisions of Section 182 of the Code of Civil Procedure of Puerto Rico.

It is in relation to this receivership motion that this case

is here again now. The motion for the receiver was at that time held in abeyance by the Supreme Court of Puerto Rico, awaiting the appeal upon the merits of the case, and after the affirmance, the ultimate affirmance by this Court, the Circuit Court of Appeals having in the meantime reversed the judgment, this Court in turn reversed the Circuit Court of Appeals and affirmed the judgment of the Supreme Court of Puerto Rico.

As soon as the mandate of this Court came down to the Supreme Court of Puerto Rico, the Attorney General immediately, on the same day, called up the motion for the appointment of the receiver which had been held in abeyance and asked the court to set down a day for the hearing of it.

THE CHIEF JUSTICE: We will stop now.

(Whereupon, at 4:30 o'clock p.m., the arguments in the above-entitled cause were recessed until Monday, February 9, 1942, at 12 o'clock noon.)

WASHINGTON, D. C.,
Monday, February 9, 1942.

The oral argument in the above-entitled matter was resumed before the Chief Justice of the United States and the Associate Justices of the United States Supreme Court, at 12:05 o'clock p.m.

APPEARANCES: [SAME]

PROCEEDINGS

THE CHIEF JUSTICE: Proceed with the cause on argument, No. 96, The People of Puerto Rico against Rubert Hermanson, Incorporated.

THE CLERK: Counsel are present.

**Argument of Colonel William Catron Rigby, on Behalf of the
Petitioner, the People of Puerto Rico (Resumed):**

MR. RIGBY: As I said on Friday, the question presented here on this hearing is of the jurisdiction primarily and the regularity and, in substance, of the jurisdiction of the Insular Supreme Court to appoint the receiver which it appointed in this case, after this Court had affirmed its judgment of July 30, 1938, decreeing a forfeiture of the corporate franchise of this corporation because of its violation of the so-called 500-acre limitation; having held something over 12,000 acres of agricultural land.

Immediately upon the mandate of this Court, upon this Court's judgment of March 25, 1940, having been filed in the Insular Supreme Court, the Attorney General of Puerto Rico renewed the motion or called up the motion which had been made back on July 30, 1938, for the receiver—the same day that the forfeiture decree had been entered and had been held in abeyance without action by the court, pending the determination of the appeal and the certiorari here—and asked that the receiver be appointed.

That motion was made on the ground that, in view of the forfeiture judgment, a receiver should be appointed. And the motion made special reference to Section 182 of the Code of Civil Procedure of Puerto Rico; sub-paragraph 4, for the appointment of a receiver in case of forfeiture of the corporate franchise, and 5, in other cases according to the practices of equity.

The respondent came in—instead of the corporation, Rubert Hermanos, Incorporated, coming in, its former directors came in—claiming to be liquidating trustees under the

corporate dissolution statute of Puerto Rico, and appearing as such, and saying that immediately upon the entry of the judgment of this Court on March 25, 1940, and without waiting for the mandate of this Court to come down they, in accordance with the statute for voluntary dissolution of corporations in Puerto Rico, and claiming that they had the right to act under that statute, had proceeded to carry out voluntary dissolution proceedings of the corporation and as its liquidating trustees had transferred all of its assets to a new agricultural partnership composed of themselves and the stockholders of the corporation, "the former corporation," as they said; had settled all of its debts and had made apparently a universal transfer of the assets subject to all the liabilities to this new partnership composed of the stockholders of the former corporation; that here was the *fait accompli* and there was nothing more for the court to do and it had no jurisdiction to proceed at all; and said also that the provision of Act No. 47 of 1935, providing for an option in case of forfeiture of a charter to the Territory to elect whether to condemn the property or to have it sold at public auction, was invalid, or at any rate could not be applicable here because the thing was done, and that in any event the final judgment of the court of July 30, 1938, that had been affirmed by this Court, ended the proceeding; and, therefore, also, the court was without further jurisdiction to proceed in any manner.

The Attorney General answered in his brief that in view of the provision of Section 182 of the Code of Civil Procedure, providing for a receiver in case of forfeiture of the charter, the provisions under which they attempted to act for voluntary dissolution were not applicable, and their proceedings were simply void and had not had any effect; insisted on the validity of the option; and answered another objection that they had made that it was *ex post facto* because they had had their land for a time before

the Act of 1935 was passed, replying it was not *ex post facto*, because, after the Act, they had not attempted to dispose of the lands at all but had indicated the intention to go right ahead just the same as they always had and had insisted simply on the invalidity of the Act; and so there was nothing *ex post facto* in the application thereof.

The Insular Supreme Court upheld entirely the position of the Attorney General; appointed the receiver; held that the application of the Act was not *ex post facto*; upheld the validity of the portion of the Act providing for the option; held that the option ran for six months after the final decision by this Court, that is, instead of their being compelled to complete the action under it within six months, as counsel was contending, that the People had six months within which to arrive at their decision, as to whether they would condemn or would elect to sell at public auction; and held that the voluntary dissolution statute did not apply to proceedings where there had been a forfeiture by decree of the court for violation of the statute. As I say, the court appointed the receiver and directed the receiver to take charge of all of the property, and to proceed with the usual powers of a receiver, to continue the operation and where necessary to incur debts for the purpose of operation, pending the decision of the Attorney General or of the People of Puerto Rico as to what election they would make under their option.

THE CHIEF JUSTICE: And assuming that the state or the government had six months in which to condemn, they could still do it despite dissolution; could they not?

MR. RIGBY: That was, of course, our position, the position of the Attorney General.

THE CHIEF JUSTICE: And of course a receivership was not necessary in order to carry out the condemnation proceeding, was it?

MR. RIGBY: Perhaps not, but the Supreme Court did think so; and we think it was very valuable and the right

thing to do, because respondents, in assuming that they had the power to go ahead, as they assumed, they could transfer all of the property to third parties and encumber the title in that way, and it would make it almost impossible to get any reasonable price on the sale of the property in case the People elected, as they did before the six months was up, to sell at public auction. Because it was manifest that you could not expect a purchaser to gamble.

THE CHIEF JUSTICE: In the event of a sale at public auction or condemnation, isn't that an incident to the condemnation?

MR. RIGBY: It would be. It would require a new set-up. It would require a great deal more machinery.

THE CHIEF JUSTICE: Whose were the proceeds?

MR. RIGBY: After the determination, the proceeds should go, presumably, of course, to the stockholders; after the thing had been wound up.

MR. JUSTICE ROBERTS: If there was an injunction against the trustees, from making the sale until the state had exercised its option, that was all the relief you needed?

MR. RIGBY: But, you see, they had really gone ahead and really abrogated their trust and made the sale before the mandate of this Court could possibly come down. They proceeded immediately just to sell to themselves, which changed their position as trustees.

THE CHIEF JUSTICE: Assuming you would still have the right to condemn and sell, the only sufferers from a low price would be the stockholders?

MR. RIGBY: Possibly; but also the People, because the whole plan of carrying out the separation of the property into small parcels and being able to sell it in a reasonable way and with reasonable promptitude, might very easily be seriously impaired. And the statute provided, of course, that it should be in the same proceeding and not in some other proceeding. That was one of the things that was at issue, and the court held, as I say,

that they could not go ahead, and the Circuit Court of Appeals upheld that, in that the determination that the forfeiture should be had,—in the decree of 1938, affirmed by this Court,—did not end the proceeding; but it was still pending for the purpose of carrying out these further provisions of the statute; and it was very proper, therefore, in that proceeding, to give a complete relief; and that they had jurisdiction to do it and it the wise thing to do under the circumstances.

The objection was made, and was made in the Circuit Court of Appeals and the Circuit Court of Appeals in its opinion dwells on that, that the receivership was broader than might have been necessary, because the option is only on the real estate. The Circuit Court of Appeals says on the "excess real estate," though we do not quite understand it that way. But counsel themselves in their briefs, there and here, have dwelt on the fact that this is a going concern and how important it is that it be not interfered with, the business be not interfered with, or anything of that kind.

The same thing applies, we submit, primarily in considering the receivership; it would have broken up the business then and would have injured everybody concerned to have given the receivers only—

THE CHIEF JUSTICE: I suppose there were liquidation proceedings in this case, on dissolution, and the statutory authority would be to carry on this business; isn't that correct?

MR. RIGBY: These directors came in, claiming to be liquidating trustees. They claimed that they had the power under the statute to proceed as they did, and in voluntary dissolution under the statute to make themselves liquidating trustees and to go ahead. And perhaps if they had gone ahead in that way and had not undertaken to sell to themselves immediately and take the thing out from under the jurisdiction of the court, the court might have been

content to appoint them as receivers. But instead of going ahead and doing that in the regular way, they instantly sold everything, lock, stock and barrel, subject to all the debts, to themselves, to the new partnership composed of their own stockholders.

MR. JUSTICE FRANKFURTER: Are you suggesting that these so-called liquidating trustees acted adversely to the interest sought to be enforced?

MR. RIGBY: Certainly they did; certainly they did. They did what they could do, apparently, to cut off or encumber the enforcement of the option.

MR. JUSTICE FRANKFURTER: Is the Puerto Rican statute clear as to the status of these liquidating directors as equivalents of receivers?

MR. RIGBY: We think it is, and contrary to their position.

MR. JUSTICE FRANKFURTER: You think it is clear directly opposite to the clarity that the Circuit Court of Appeals found?

MR. RIGBY: Precisely. The Supreme Court of Puerto Rico held that the statute relating to voluntary dissolution does not apply to the case of a forfeiture by decree of court of a corporate franchise, at all; that it has nothing to do with that. We believe that they are perfectly right in that, and we point out the reasonableness of that in our brief.

MR. JUSTICE FRANKFURTER: Is there any other law except this statute and the construction of the Supreme Court in this case?

MR. RIGBY: There are two statutes to be considered. The Supreme Court of Puerto Rico took the same position that the Court of Texas took in the San Antonio Gas case* as to the construction of the statute.

MR. JUSTICE FRANKFURTER: Did the Puerto Rican statute derive from the Texas statute?

* San Antonio Gas Co. vs. State, 22 Texas Civ. App. 118; 54 S. W., 289, 293, 294.

MR. RIGBY: No; it is derived from California, but with a very marked and very significant difference, and that is the thing that to our mind is conclusive, because the Circuit Court of Appeals followed the decision of the California Supreme Court in the Havemeyer case and apparently there ignored the difference and, as we think, the difference deliberately made by the Legislature of Puerto Rico.

MR. JUSTICE FRANKFURTER: Would it be convenient to your argument to state those differences?

MR. RIGBY: Yes; I would like to, right now.

In the first place, the California statute I have cited on page 4 of my reply brief but, with the permission of the Court, I want to read the whole statute a little more at length than I have stated it there. It is Section 564 of Deering's Codes of 1931 of the Civil Code of California.

MR. JUSTICE FRANKFURTER: Would you be good enough to give that citation again? It does not seem to correspond to the one I have located.

MR. RIGBY: It is cited on pages 8 and 9; I am sorry.

The one I will now call to the Court's attention and read first, however, is the one cited on page 4 of my brief. That is Section 399 of Deering's Civil Code. The other was the Code of Civil Procedure. I am now quoting from the Civil Code, Section 399, that is as to the winding up, the dissolution of corporations. Section 399 reads:

"All corporations, whether they expire by their own limitation, by forfeiture of existence by order of court, or are otherwise dissolved, shall nevertheless continue to exist."

Now, the Legislature of Puerto Rico, in following that statute in enacting Section 27 of its corporation law, omitted that clause about forfeiture of existence by order of court; so as to make the Puerto Rico statute read—and we have quoted it at length on page 41 of the appendix to our petition for certiorari:

"Section 27. Corporate existence pending dissolution. All corporations, whether they expire through the limitation contained in the articles of incorporation, or are annulled by the legislature, or otherwise dissolved, shall continue."

You see, they omitted the clause about forfeiture by order of court.

MR. JUSTICE FRANKFURTER: Would you say there is anything in the suggestion that annulment by the Legislature means they are dissolved by the Legislature by that annulment?

MR. RIGBY: That might be, except for the other phraseology in the statute. In the first place, if I may look at just another angle for a moment, the Legislature of Puerto Rico puts ahead of that Section 27, Section 26 which defines what a dissolution is; and there is no such provision at all in the California statute. Section 26 deals with voluntary dissolution, and that is the "dissolution" as they call it, apparently.

Then if I may refer to the decision of this Court in the Talbot case* against the Territory of Montana where this Court held that in the banking statute, the National Banking Act of 1864, all of the sections of it refer to territories as well as to states, because in the initial section of the statute the word "territory", as well as "state", is used. And this Court went on and laid down the rule which is of course well-established, that where in the initial section of a statute a word has been used with a certain definition and clear meaning it is not necessary in the following sections of the statute always to repeat that you mean to use it with that meaning.

So here the Legislature of Puerto Rico, in the initial section of Chapter VI of this Act, Section 26 as it is re-

* Talbot vs. Silver Bow County, 139 U. S., 438, 443-444.

printed here, had spoken of dissolution as denoting voluntary dissolution.

THE CHIEF JUSTICE: Well, but, does not Section 27 cover other dissolutions than voluntary dissolutions?

MR. RIGBY: It covers the other two classes, but not this class.

THE CHIEF JUSTICE: Annulled by the Legislature?

MR. RIGBY: It covers that specifically.

THE CHIEF JUSTICE: "Or otherwise dissolved"?

MR. RIGBY: Whether they expire, first, through limitation of the articles of incorporation, through time; that is one thing. Two, where they are annulled by the Legislature; that is the second class.

THE CHIEF JUSTICE: And then, third?

MR. RIGBY: Third, "otherwise dissolved," which we think plainly refers back to being dissolved in accordance with Section 26. And that is carried out by the fact that they significantly omit the provision which was in the California statute that they were following, as I read it, which provided in case of forfeiture specifically; and then they put into Section 182 of the Code of Civil Procedure the express provision giving the court power to appoint a receiver in case of dissolution on forfeiture of the corporate charter.

MR. JUSTICE FRANKFURTER: As I follow your argument, it appears in connection with "otherwise dissolved" that "dissolved" means what Section 26 defines.

MR. RIGBY: Precisely.

MR. JUSTICE FRANKFURTER: But that leaves, as the Chief Justice has just suggested, the termination through the limitation of time, the limitation of the articles of incorporation; that kind of termination is out of the picture. At least, that is not in this?

MR. RIGBY: That is not in this; no.

MR. JUSTICE FRANKFURTER: Or by annulment of

the Legislature—now, what do you say as to the scope of that category of dissolution?

MR. RIGBY: That is where by act of the Legislature, general act of the Legislature or a special act if there had been reserved the power, the Legislature had ordered the corporation dissolved.

MR. JUSTICE FRANKFURTER: You mean annulled by the Legislature, and meaning only by the Legislature and not any agency of it?

MR. RIGBY: Specifically what the language says, apparently. Now, the widening of that, to mean an act by the court forfeiting it pursuant to an act of the Legislature, is apparently excluded, because of the fact that, as they had that phraseology before them in the California model that they were following, they purposely omitted it.

MR. JUSTICE FRANKFURTER: They left that out, but stuck something else in?

MR. RIGBY: No; but they say in the California model which they had—

MR. JUSTICE FRANKFURTER: It is not on page 4.

MR. RIGBY: The California model—no; that is right. They stuck in in place of it “or are annulled by act of the Legislature”. But apparently they do not mean that to include forfeiture by order of the court, because specifically in Section 182 of the Code of Civil Procedure, when they are defining the cases where the court has power to appoint a receiver, they specifically transfer over there this provision about forfeiture by order of the court.

MR. JUSTICE REED: Now, where is that 182?

MR. RIGBY: Now, just a moment—

MR. JUSTICE FRANKFURTER: Page 46 of the petition.

MR. RIGBY: Yes; page 46. “A receiver may be appointed”—

MR. JUSTICE REED: Yes; I have it.

MR. RIGBY: (continuing)—“by the court in which an

action is pending or has passed to judgment, or by the judge thereof"—1, 2, 3 and then 4: "In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights."

Evidently they have that in mind as a specific category, you see. And this Act was adopted, I may say, in 1902, in the same year and the same month in which the corporation Act was adopted.

MR. JUSTICE FRANKFURTER: Now I notice on that page, in connection with Section 182, I notice parenthetically the reference to Section 564 of the California Code.

MR. RIGBY: Yes.

MR. JUSTICE FRANKFURTER: Is that the source of Section 182 for Puerto Rico?

MR. RIGBY: The source of Section 182 for Puerto Rico is the California statute.

MR. JUSTICE FRANKFURTER: Apparently California authorized the appointment of a receiver there, and the question of forfeiture by court action is in other places in the California Code.

MR. RIGBY: Yes; but there is another significance to that, in that the California statute provides only while the case is pending and before it is passed to judgment.

The California statute, Section 564—and that is the one I was about to read a moment ago, first; and I have it here in full, and that is cited on pages 8 to 9 of our brief—reads this way:

THE CHIEF JUSTICE: Is that printed?

MR. RIGBY: That is printed, Your Honor. We call attention to that on pages 8 to 9 of our reply brief. The very significant thing there is that the Legislature of Puerto Rico in following that statute put in the clause "or has passed to judgment" in the caption, the first clause of the statute; so that, whereas the California statute read, "A receiver may be appointed by the court in which an action

is pending or by the judge thereof under these circumstances," the Puerto Rico statute reads, as printed on page 46: "A receiver may be appointed by the court in which an action is pending *or has passed to judgment, or by the judge thereof.*"

Making all the difference in the world, you see. And putting those statutes together, it seems perfectly plain that was the intention of the Legislature of Puerto Rico, to transfer this provision as to where it has forfeited its corporate rights from the category of the ordinary dissolution statute, where the directors might proceed as liquidating trustees, and to transfer it into the category where they gave the court which had ordered the forfeiture a continuing power, even after the proceeding had passed to judgment, to appoint a receiver in such case of forfeiture of corporate rights.

Now, it seems perfectly easy to us to see why the Legislature may have decided that they wanted to do that; because, after all, where there has been such a violation of the law by the management of a corporation that it is determined necessary by the court to forfeit their corporate rights because of the violation, there may be good reason for saying that they should not have the same right to go ahead, of course, and appoint themselves as liquidating trustees to wind it up, that they would have in the ordinary dissolution case.

MR. JUSTICE FRANKFURTER: What has Judge Magruder to say with reference to the history as you see it in regard to Section 182, and the general provisions in Section 27 and the other sections?

MR. RIGBY: He just simply said the general—I will read you the language; he did not go into the other provisions at all.

MR. JUSTICE FRANKFURTER: Was that history ever before the Circuit Court of Appeals?

MR. RIGBY: Not as fully as we put it here.

MR. JUSTICE FRANKFURTER: What was left out?

MR. RIGBY: Well, the careful analysis that we have tried to make in our brief here, I confess was not made

there. You see, it came up there and we were the appellee, and we simply called the attention of the court to the judgment of the Supreme Court of Puerto Rico and rested on its opinion, without going into the analysis of it which we have made here.

THE CHIEF JUSTICE: Where is 182 printed in full.

MR. RIGBY: 182 is printed in full on pages 46 to 47 of the appendix to our petition for certiorari.

MR. JUSTICE FRANKFURTER: In this case, while we have the Puerto Rican Legislature and the judgment of the Supreme Court of Puerto Rico, we are not embarrassed by any consideration that we are dealing here with matters that are derived from a conflict in Spanish law or Spanish text? This is all a matter of the Puerto Rican statute as derived from the California statute?

MR. RIGBY: That is true. The only thing here is that this is a construction by the Supreme Court of the Territory of the territorial statutes; and nothing specifically because it came from Spain.

MR. JUSTICE FRANKFURTER: When did this get into the Civil Code?

MR. RIGBY: In 1902*; both of them.

* A mistake as to the dates. *The Corporation Law*, in fact, antedated the Code of Civil Procedure, by two years. The Corporation Law, in 1902, appears in the "Revised Statutes and Codes of Porto Rico", 1902, in "Title II. Regarding Corporations", as "Chapter I" of that Title, "Domestic Corporations", Sections 32-92, inclusive. The present "Article VI; Dissolution", Sections 26-33, inclusive, appears in that 1902 Code in almost identical form, under the same caption, "Article VI. Dissolution", as Sections 53-60, inclusive, on pages 775 to 779 of the 1902 Code.

The Code of Civil Procedure of Puerto Rico, containing Article 182 in the same form as it now appears (*Appendix to our Petition for Certiorari*, pp. 46-47) was originally approved on March 10, 1904. (*Compilation of Revised Statutes and Codes of Puerto Rico*, 1911, pp. 813, 838).

It follows, therefore, that if the difference in the dates of original enactment of these two statutes makes any difference here whatsoever, then it is the Code of Civil Procedure,—and this Article 182 of that Code,—that is the later expression of the legislative will, rather than the Corporation statute:

MR. JUSTICE FRANKFURTER: Has it been unchanged since then, since 1902 as it was in the original code?

MR. RIGBY: In the original code of 1902. It has been re-enacted, but it has never been changed. Now, counsel say that the Corporation Law was enacted in 1911, and should therefore be given the weight of being the last expression of the legislative will; but if counsel will look at the statutes again he will see, I think, that he is clearly mistaken in that line. The Corporation Law was enacted in 1902, and was simply re-enacted in 1911, with no change in this respect.

MR. JUSTICE FRANKFURTER: When the two statutes got into the law, as you have stated, is there a contradiction between Section 182 and its various articles, and the corporation law?

MR. RIGBY: We do not think so. Of course, counsel maintains that there is.

MR. JUSTICE FRANKFURTER: Do you mind stating what that is?

MR. RIGBY: They claim as to Section 27 that in the reading of it it is conclusive, and that is all. Our argument is—and that was the argument of the Insular Supreme Court, and we think they were right—that that section, in view of Section 26, is limited simply to voluntary dissolutions.

In other words, Section 27 talks about three of the four classes; it talks about expiration by limitation of time, which is one class; it talks about annulment by the Legislature, which is a second class, and it talks about dissolution, that is to say the ordinary voluntary dissolution, which is a third class; and that the fourth class of forfeiture of corporate rights by an act of the court is the action that is dealt with in Section 182, and the Legislature of Puerto Rico has clearly intended to make that a different class and to take it out of the class covered by the voluntary dissolution. And for that reason did not follow the model which they were in a general way following, of

the California statute; but changed both the corporation law as to dissolution on the one hand, and changed the caption of the Code of Civil Procedure on the other hand, so as specifically to give this power to the court after the case had passed to judgment.

MR. JUSTICE FRANKFURTER: Have you got the dates readily in mind of the passage of the Civil Code of 1902, and also the date of the act establishing the private corporations of Puerto Rico?

MR. RIGBY: Both were in 1902, as I say; both approved March 1, 1902.

MR. JUSTICE FRANKFURTER: So they were contemporaneous enactments?

MR. RIGBY: They were contemporaneous enactments. And the re-enactment of the Corporation Act in 1911, with the small changes that were made, we think is clearly within the doctrine of this Court in the rule established, for example, in the case of *Posadas*, the Collector of the Philippine Islands,* against the National City Bank, (296 U. S. 497, 503-506), where this Court pointed out that a re-enactment of that kind—page 503; that was 296 U. S., 497; I think I should add it to my brief, if I may—this Court said at page 503, that “as a general thing a later act is to be construed as a continuation of, and not a substitute for, the first act and will continue to speak, so far as the two acts are the same, from the time of the first enactment.”

THE CHIEF JUSTICE: That is the *Posadas* case?

MR. RIGBY: That is the *Posadas* case; *P o s a d a s*; *Posadas*, Collector of Internal Revenue of the Philippine Islands against the National City Bank of New York, 296 U. S., syllabus at page 497. I am quoting from page 503.

MR. JUSTICE REED: Colonel, could you help me on that Section 182, sub-section 4. Now, that speaks of the class “or has forfeited its corporate rights”.

MR. RIGBY: Yes.

MR. JUSTICE REED: Which I understand is the particular class you are arguing on.

MR. RIGBY: Precisely.

MR. JUSTICE REED: Now, what is the act; is it No. 47 that says that on holding land of more than 500 acres there may be a forfeiture of the corporate rights?

MR. RIGBY: That is Act No. 47 of 1935.

MR. JUSTICE REED: Now, that is printed on page 44 of your petition, I believe?

MR. RIGBY: Yes.

MR. JUSTICE REED: Now, what part of that forfeits the corporate rights?

MR. RIGBY: Then there is also the provision in the last part—that runs over onto page 45; Section 6, page 45, “and when the decree of nullity affects”—

MR. JUSTICE REED: That gets into the Code, doesn't it?

MR. RIGBY: No; just above that, the last part.

MR. JUSTICE REED: I see.

MR. RIGBY: The last clause of Act No. 47, just above the Code of Civil Procedure.

MR. JUSTICE REED: Yes; I see. Now, what is the point?

MR. RIGBY: “when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings.”

Then the option goes back in Section 2; that is, at the end of Section 2 the option is, back on page 44. The paragraph begins:

“When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlaw-

fully holding, under any title, real estate in Puerto Rico, the People of Puerto Rico may, at its option, through the same proceedings"—

That is, dealing with the forfeiture proceedings, that the first paragraph of the section is providing for—

“—through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.”

MR. JUSTICE REED: Now, let me see if I understand that. The clause as to the forfeiture of the corporate rights, you consider as the important clause. And you read Section 2, which gives you the right to proceed against the corporation for forfeiture, as though the first paragraph of Section 2 was to be read into the second paragraph; so that not only you confiscate the land, but you forfeit the corporate rights of the corporation.

MR. RIGBY: The first thing we do is to forfeit the corporate rights. That was the thing that was upheld by this Court in its former decision, and what was done in the judgment of July 30, 1938.

MR. JUSTICE REED: So taking the land and forfeiting the corporate rights, is that the way you construe that in connection with confiscating the property?

MR. RIGBY: “Confiscate” should read, in what I read and then the next paragraph and also in Section 6, “confiscate” really means to dispose of, you see, for a reasonable price.

MR. JUSTICE REED: Yes.

MR. RIGBY: So that in the same proceedings in which the judgment of forfeiture was entered, that is this proceeding which was under Section 2, this gives the People of Puerto Rico the right to ask the Supreme Court of

Puerto Rico in the same proceedings to proceed to execute whatever is necessary to carry out the determination of the option, which they did determine a little after this receivership was instituted. They advised the court, and it is in the record here, that their election is to sell the property at public auction in this same proceeding, now.

MR. JUSTICE REED: What becomes of the corporation in such a proceeding?

MR. RIGBY: Well, of course, the corporation is just dead. That is, the decree of the Supreme Court of Puerto Rico, affirmed by this Court, which would completely wipe out the corporation. It forfeited its corporate franchise, so that it is simply dead as a corporation. And the only thing left is to determine what is the right way to proceed to wind up its assets and to dispose of them. And our position is, as the Supreme Court of Puerto Rico held, that it is its right and its duty under that provision of the Code of Civil Procedure to appoint a receiver and to proceed in that manner to wind up the corporation; so we make the necessary orders to carry out the option, which the—

THE CHIEF JUSTICE: Well, you see, without the appointment of a receiver you say there was no person authorized to do anything with this property or dispose of it or wind it up.

MR. RIGBY: Precisely; precisely. That is the only way.

THE CHIEF JUSTICE: That is a necessary part of your argument?

MR. RIGBY: I don't know that it is really necessary to the argument, because Section 5 of this same paragraph, Section 5 of this same 182 provides a power in the court to appoint a receiver in other cases in accordance with the usual practices of equity.

THE CHIEF JUSTICE: It still would be necessary to have a receiver, somehow?

MR. RIGBY: I beg pardon?

THE CHIEF JUSTICE: In your view it still would be necessary to have a receiver appointed in this proceeding, or in some other?

MR. RIGBY: Yes; precisely, in order to carry it out.

MR. JUSTICE FRANKFURTER: I am not sure whether you answered that the way I understood it. Do you deny that the Puerto Rican court could in its discretion have appointed these liquidating directors of the extinguished corporation?

MR. RIGBY: No. On the contrary, I think I said they would have had discretion to do so.

MR. JUSTICE FRANKFURTER: I don't mean as persons; I mean, instead of taking the entity, if they were taken as individuals, as the court would have been empowered to do; that these directors who were the liquidating officials, the liquidating trustees, in the interest of the corporation itself would also be deemed to be the receivers for the court, that they could do that for the purpose of enforcing the 500-acre law.

MR. RIGBY: I see no reason why those individuals could not have been appointed by the court, just the same as anyone else. And, as I say, if they had not attempted to take advantage of their trust duties to grab the whole thing for themselves, the court might have decided that was the best thing to do.

THE CHIEF JUSTICE: What do you mean by "trust duties"? What were they in this thing?

MR. RIGBY: As we see it, they had none, but they assumed they had.

THE CHIEF JUSTICE: You come back to the point that unless a receiver was appointed there was no person who could do anything in the corporation, and that includes not only as to the land but their personal property.

MR. RIGBY: Everything, as we see it. Now, I am simply saying as to the matter—

THE CHIEF JUSTICE: Although you do not contend there is any right to confiscate personal property, do you?

MR. RIGBY: No; of course not. But there had to be some way—

THE CHIEF JUSTICE: You had to do that, in the event of the dissolution of this character, with no one to look after the personal property, because the state had no jurisdiction.

MR. RIGBY: That is true. There had to be some way of disposing of it. Now, as I say, on the matter of discretion—

MR. JUSTICE JACKSON: Could the court prevent that? The directors could not sell to prevent a public sale; but the man you would appoint as a receiver would have to operate this property for an indefinite time and handle the money and generally to take the place of the offending corporation owning 12,000 acres of land.

MR. RIGBY: Of course, as we see it, they did not quite get the point of the order, at all. The order contemplates to hold it only until it was possible to carry out the option. Now, of course, that receivership order was made before the election had been given to the court as to how the option should be carried out. It was a matter of holding it in status quo and keeping it operating until their further order.

MR. JUSTICE JACKSON: In other words, there might have been problems arising requiring the handling of money, and that was substantially your purpose?

MR. RIGBY: Exactly, and that was, as we understand, the purpose.

MR. JUSTICE JACKSON: To effectuate it.

MR. RIGBY: To effectuate it.

MR. JUSTICE JACKSON: You did not require any receiver to borrow money or handle personal business?

MR. RIGBY: Except insofar as in operating a going business of that sort you have to have some way of getting

the money to pay debts and things of that sort as they come up. Now, you take over a going property there.

MR. JUSTICE JACKSON: You do not propose to sell it, as a rule, if you take it over? You wind it up.

MR. RIGBY: But before they can determine how to wind it up at auction or determine to sell it in the best way, they have to run it long enough to go through with the necessary machinery and make the arrangements. They cannot just stop. Counsel themselves call attention in their brief that you cannot stop for a day and cannot shut down the machinery; if you do, you lose money and it deteriorates.

THE CHIEF JUSTICE: Could you sell the personal property?

MR. RIGBY: If you sell the personal property there would be a considerable amount—

THE CHIEF JUSTICE: I say, could you? Is there any authority in this proceeding to sell the personal property?

MR. RIGBY: Except as the receiver might dispose of it, liquidate and dispose of it.

THE CHIEF JUSTICE: Well, does the receiver have authority to, in order to carry out the judgment, in your view, if the judgment calls merely for distribution or disposition of the realty?

MR. RIGBY: I don't see why he is not the receiver for all the purposes that a court of equity may appoint a receiver for.

THE CHIEF JUSTICE: If he is merely the receiver to carry out this decree? What has this decree to do with personal property?

MR. RIGBY: He is the receiver appointed by the court under Section 182, as we understand it.

MR. JUSTICE FRANKFURTER: The question was whether that is a valid appointment; that is the initial question.

MR. RIGBY: That is different; but assuming that that

is a valid appointment, he has all the powers of any receiver.

THE CHIEF JUSTICE: I am looking; really, for a little different consideration. You say there is no authority in the case of a corporation dissolved as this one was to deal with its affairs at all.

MR. RIGBY: There is no authority in the former directors of the corporation.

THE CHIEF JUSTICE: That is, to no one else except who is a receiver?

MR. RIGBY: Yes.

THE CHIEF JUSTICE: But you say the authority for the appointment of the receiver is to carry into effect this decree.

MR. RIGBY: No; not necessarily and altogether alone, at all.

MR. JUSTICE FRANKFURTER: May I ask this question?

MR. RIGBY: Certainly.

MR. JUSTICE FRANKFURTER: Directing your attention to the order on page 127, will you be good enough to look at the order in the first paragraph conferring authority and powers upon the receiver appointed or designated, and he is designated in the second paragraph, "To take and maintain possession of all the properties and especially of the lands which in violation of the law were possessed by the corporation."

Now, if I may merely rephrase the question, as I understood it, of the Chief Justice; what is ordered and what can be forfeited is merely land; is that correct?

MR. RIGBY: We understand that; yes. That is, including the mill and all, that that is real property under the Spanish law.

MR. JUSTICE FRANKFURTER: Now, evidently there are properties other than that?

MR. RIGBY: Of course.

MR. JUSTICE FRANKFURTER: Therefore the question is, 1, whether under these circumstances the court could appoint a receiver to hold and take over the lands which were forfeited? That is one question. The second question is, assuming the court can do that, may the receiver be put in charge of the whole enterprise?

MR. RIGBY: As we see it, in order to determine that you have to look at the enterprise as it was.

THE CHIEF JUSTICE: No; you have to look at the statutes first, I think.

MR. RIGBY: Yes; and the statute—

THE CHIEF JUSTICE: Now, where do you find the statutory authority to appoint a receiver, even though you assume that it is proper to appoint a receiver to carry out this decree, where do you find the statutory authority to appoint a receiver for the personal property of this corporation? Unless—

MR. RIGBY: In that connection, this paragraph 4, subparagraph 4 of Section 182 of this Code of Civil Procedure; paragraph 4 on page 46.

THE CHIEF JUSTICE: 46?

MR. RIGBY: Of our brief.

“In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.”

And 5, on the next page:

“In all other cases where receivers have heretofore been appointed by the usages of courts of equity.”

Now, here is a corporation that has been dissolved, has forfeited its corporate rights. There is nobody authorized to take care of that property.

MR. JUSTICE FRANKFURTER: Well, may I interrupt you there? I do not quite follow that. It brings up the question asked by the Chief Justice a little while ago, that no trustee has any trust duty. Didn't they have a trust duty with reference to the non-forfeitable assets of this

corporation, and are not the stockholders entitled to liquidate the value of those properties?

MR. RIGBY: We do not so understand it. Of course it goes back to the old common law, it is in the state.

MR. JUSTICE FRANKFURTER: The state did not get it by virtue of a petition?

MR. RIGBY: No.

MR. JUSTICE FRANKFURTER: Does it get it by virtue of escheat?

MR. RIGBY: Not escheat, exactly. But you have a situation where we have property with no one authorized to take charge of it. Of course, in the absence of statute there is no one authorized to go ahead and care for the property of the corporation.

The statutes enacted in all of the States provided in different ways for some methods of caring for the property of a dead corporation, so as to avoid the escheat that was in the common law. As we read it, the methods provided by the Legislature of Puerto Rico are different in the different classes. They provide for liquidating trustees in *three* of the classes; namely, the expiration of the charter by time, the annulment by legislative act or the voluntary dissolution; and there a trust duty is placed upon the former directors and they become liquidating trustees. Of course they may be displaced by a receiver appointed by the court in a proper action if they are abdicating their duties or not performing their duties in the right way. And that receiver thus appointed would have all the powers that they had over not only some property the state might have some special claim on, as here the lands under this option, but on any property of the corporation that could be sold.

THE CHIEF JUSTICE: As to this decree on which there is no execution, that involves a sale, doesn't it?

MR. RIGBY: That involves a sale.

THE CHIEF JUSTICE: What is the necessity for a receiver there?

MR. RIGBY: Well, I was going to say, the other class, then, is the *fourth class*, where the only provision in the Puerto Rico statutes is that the appointment of a receiver in the case of forfeiture is provided. Now, that receiver, as we see it, he has the same powers and all the powers that a receiver would have if appointed to displace the liquidating trustees, and that includes, of course, the disposition of the personal property under the direction of the court.

THE CHIEF JUSTICE: Now, on the other hand, if you should read Section 27, as authorizing the directors or trustees of this corporation to act as liquidating trustees, is there any occasion for the appointment of a receiver?

MR. RIGBY: As we see it, yes. That is, under paragraph 5 of this Section 182: "In all other cases where receivers have heretofore been appointed by the usages of courts of equity." Because of the abdication of their trust duties in the liquidation, if you consider them liquidating trustees.

THE CHIEF JUSTICE: Well, if they had authority to liquidate this company, how do you find any authority in a court of equity to appoint a receiver?

MR. RIGBY: Because in liquidating it they were bound to consider the claims and the liabilities against it. Here they deliberately refused to consider one of the most important claims upon it, the claim of option by the state to determine whether to sell this land or to condemn it; and they tried to encumber the title so that when the state came to do it—

THE CHIEF JUSTICE: But they did not encumber the title, on your theory; they could not avoid the state's title.

MR. RIGBY: By transferring it to themselves completely, they would be then in position to sell or to do anything they wanted to with it. They just dis-owned any responsibility.

THE CHIEF JUSTICE: Are you undertaking to say they could give a title superior to the state?

MR. RIGBY: No; but they could make a purchaser go through a lot of proceedings to try to settle the title, and

put it into a difficult situation for the state to carry it out.

THE CHIEF JUSTICE: The state had no interest in the proceeds, did it?

MR. RIGBY: Well, yes and no. The state had an interest in having the thing done as effectively as it could be done; and has a perfect right to be able to go ahead with the carrying out of their option without having to get a lot of litigation involved in the claims of third parties who might claim that they had received title by purchase from this partnership.

MR. JUSTICE ROBERTS: Did I understand you to say that these trustees had done all that before these proceedings had come up?

MR. RIGBY: Yes.

MR. JUSTICE ROBERTS: Then what good is the receivership? You have to leave them, now.

MR. RIGBY: The motion was filed in 1938.

MR. JUSTICE ROBERTS: And all that was done after that?

MR. RIGBY: Yes; before the mandate of this Court could get back, they undertook to carry out that transfer to the trustees themselves.

MR. JUSTICE ROBERTS: Yes.

MR. RIGBY: And so far no third party has got into it, so that they are all subject to the court.

MR. JUSTICE ROBERTS: You can enjoin the company, and that is the purpose for the proceedings.

MR. RIGBY: But they put themselves in position to go ahead, and they were trying to dis-own all responsibility.

MR. JUSTICE REED: Is the validity of the transfer in the face of what they did, is that questioned?

MR. RIGBY: The Supreme Court of Puerto Rico holds, as part of that, that all of those acts were simply voided by what they did.

MR. JUSTICE REED: Did that go to the C.C.A.?

MR. RIGBY: That went to the C.C.A.

MR. JUSTICE REED: What did they do about it?

MR. RIGBY: They did not specifically pass upon it.

MR. JUSTICE REED: They don't mention the other part, but merely set aside the real estate?

MR. RIGBY: They upheld the validity of the option and that kind of thing. They did not specifically say that that transfer was void as established by the option.

THE CHIEF JUSTICE: Don't they recognize that the rights of the state under this decree could not be voided by any such action?

MR. RIGBY: Apparently they do, because they uphold the validity of the option, which goes to the same thing.

THE CHIEF JUSTICE: And if they are right about it, and the only purpose of this proceeding is to instruct the trustees, I don't quite see how the state has been hurt.

MR. RIGBY: Well, we cannot think that the state is not hurt when individuals have undertaken to say that they have a right to transfer all that property to themselves, apparently free and clear, and we would have to go back and have further litigation to get the thing back.

MR. JUSTICE REED: Why would you be interested in it any further if it passed to other parties? Why would the state be interested in it?

MR. RIGBY: Of course they keep the 12,000 acres just the same in the hands of the partnership, instead of in the hands of a corporation, and undertake to carry on the property just the same as it was before. In effect, they destroy any practical benefit to Puerto Rico in the program of dividing up the property.

MR. JUSTICE REED: Do you claim there is any prohibition against partnership ownership?

MR. RIGBY: There was not at that time, no; but there was, as we see it, when it was resorted to as a way to avoid the normal effect of the forfeiture decree. Otherwise, there would not have been.

**Argument of Henri Brown, Esq., on Behalf of Respondent,
Rubert Hermanos, Inc., et al.**

MR. BROWN: May it please the Court, perhaps I may be permitted to say at the outset that this is a matter of considerable importance to Puerto Rico, the decision of the Court upon this writ. There are pending before the Supreme Court of Puerto Rico at present, I think, something like nine or ten cases of *quo warranto* proceedings that were instituted, most of them, early in 1936. This is the only case that has gone to judgment, so far.

This proceeding was instituted under an amendment to the *quo warranto* law of Puerto Rico, which was enacted in 1935, and is referred to as Act No. 47 of the special session of that year. It was designed to prevent, or rather to enforce the provision of the joint resolution of Congress that no corporation authorized to engage in agriculture should be permitted to own or control more than 500 acres of land.

It changed the existing *quo warranto* law very materially. The old *quo warranto* law was the modern conception of *quo warranto* law and merely provided for the forfeiture of the franchise, the imposition of a fine, and invested the court with discretion as to whether the franchise would be forfeited or whether it would impose both a fine and forfeiture or either one.

Now, practically all of the respondent corporations objected to this law in the lower court on the ground and asserting it was invalid. It must be remembered that the jurisdiction of the Supreme Court rested upon that law. It was the first time the Supreme Court of Puerto Rico had been given jurisdiction of *quo warranto* proceedings.

The attack was made upon two grounds, one of which was disposed of in this Court in the former appeal on this case. That ground was that the Legislature had attempted to amend a law of Congress and to impose penalties for viola-

tion of a law of Congress. The second ground was that the penalties provided by this law were both ex post facto and violative of the due process clause of the Constitution of the United States and of the Organic Act of Puerto Rico.

Now, as I will have occasion to refer to the provisions of Act No. 47 several times during the course of this argument, I would like to be permitted to read Section 2 of Act No. 47, which is copied at pages 15 and 16 of my brief. It reads:

"Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall decree the dissolution of the defendant if it be a domestic corporation, the prohibition to continue to do business in the country if it be a foreign corporation, the nullity of all acts and contracts realized by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property."

Now, these penalties of course appropriated and reversed the old common law rule. The contracts and acts of the corporation being annulled, and all of the entries in the registers of property and titles being cancelled, the result naturally would be that the only title left outstanding would be in the grantors of the corporation. Those contracts being annulled, no suit could be brought against the corporation, so that the debts to and from the corporation would be cancelled. And as the corporation could no longer hold property, being dead, quite likely its personal property would escheat to the state under the provisions as to escheat in the case of deceased persons.

Now, in each of these cases one of the grounds of attack on the statute was that the provisions were invalid and violative of Constitutional guaranties. It was further asserted that they were designed, because of their severity, to close access to the courts.

The only opinion in which the Supreme Court of Puerto Rico disposed of this question was in the Hart (?) Sugar case, in which I was of counsel and in which I argued. The Supreme Court passed upon the first objection, and held, and in that respect was sustained by this Court, that the legislation was within the powers of the Puerto Rican Legislature. It declined to pass upon the question as to the validity of the penalties, although we had insisted that if these penalties were invalid and if they formed a substantial part of the law and were not separable, it vitiated the whole act.

This Court sustained the Supreme Court of Puerto Rico, holding that this act was within the powers, the legislative powers devolved upon the Legislature by the Organic Act. Neither this Court, nor the Circuit Court of Appeals, nor the Supreme Court of Puerto Rico passed upon these penalty clauses.

Now, of course in the judgment made in this case, although these penalties are mandatory under this provision, under this Section 2 the law says they shall impose this as a part of the judgment, they did not do it. There has never been any declaration by the court, any court, as to the meaning of that part of the act and what its possible effect may be in any pending case.

MR. JUSTICE FRANKFURTER: May I interrupt you there? I take it there is no question as to the effect of this order?

MR. BROWN: I am not sure. I hope so, but I am not at all sure of it.

MR. JUSTICE FRANKFURTER: If not, then it would not make any difference what we did with it.

MR. BROWN: After this Court had affirmed the judgment of the Supreme Court of Puerto Rico, the corporation was dead and it was necessary to take some action immedi-

ately. We believe that under the Corporation^o Law of Puerto Rico the directors were the trustees and had power to liquidate the corporation.

The grinding season was then at its peak and the mill was operating and cane was being cut and ground. It was necessary to take some action immediately, and of course the corporation could not continue doing the business it had been engaged in. It would have been guilty of contempt of court and liable to summary action by the court had it continued to engage in business. The directors as the trustees were able to satisfy the obligations, the outstanding debts of the corporation, and it was felt that the proper thing, the wise thing to do was to turn this property over to the very persons that were entitled to it under the law, namely, its stockholders.

At this point perhaps I may anticipate a bit a subsequent point in our discussion.

MR. JUSTICE REED: Is the order that was entered and which was affirmed here in the transcript of the record; the order of the trial court of Puerto Rico?

MR. BROWN: You mean, appointing the receiver?

MR. JUSTICE REED: No; the old order that was here before?

MR. BROWN: No; it is only referred to in the briefs and the record. It is found—does Your Honor mean the judgment of the Supreme Court of Puerto Rico?

MR. JUSTICE REED: No.

MR. BROWN: The opinion of this Court reversing the Circuit Court of Appeals is found in 309 U. S., 543.

Mr. JUSTICE REED: Yes.

MR. BROWN: At page 40 of our brief we quote from Stearns Coal and Lumber Co. versus Van Winkle, that cites the doctrine declared by this Court in Pewabic Mining Co. versus Mason. It says:

“The Pewabic Case recognized the right of stockholders to agree among themselves upon the disposition and transfer of the assets.

"The relations of stockholders in an expired corporation are 'analogous to the relations of partners.' *Mason v. Pewabic Mining Co.*, 66 Fed. 391: * * * Opinion of the Justices, *supra*, 66 N. H. 639. The rule by which partnership real estate is regarded in equity as personality is merely for the purpose of subjecting it to the payment of debts and the adjustment of balances between partners (*Riddle v. Whitehill*, 135 U. S. 635); but where there are no debts or the debts have all been paid, the partners have the right to personally dispose of or divide the lands: * * *

"Statutes for winding up the affairs of dissolved corporations are 'embodiments of equitable doctrines, and afford legal remedy where before there was none.' "

And it goes on to state:

"Had the officers of the Oil Well Company taken the statutory proceedings for liquidation of the affairs of the corporation, it would, we think, have been entirely competent, after the payment of debts or after ascertainment that there were none, for the stockholders to divide or dispose of the real estate on the basis of legal ownership as tenants in common."

THE CHIEF JUSTICE: I suppose there is no question about the general rule that when a corporation liquidates its operations that its stockholders are authorized to dispose of its assets. But the difficulty is here we have some statutes and your opponent says that this statute which controls all that happens when a corporation is dissolved does not permit that in this kind of a statute. Haven't we got to examine those statutes to find out what they mean?

MR. BROWN: Yes, I am coming to that, Your Honor.

THE CHIEF JUSTICE: Well, that is the case, isn't it?

MR. BROWN: Yes.

Now, the argument really divides into two parts, and perhaps the first part is more or less non-essential. The first is whether the Supreme Court of Puerto Rico had any power to appoint a receiver in this case; and the second is whether they had power to grant the kind of receivership that it did grant.

The motion for the appointment of a receiver is found at

pages 3 and 4 of our brief. It is found also at pages 16 and 17 of the record. It is quite short, and reads:

"1. This Honorable Court has recently rendered judgment in the above entitled case (1) ordering the dissolution of the respondent corporation and (2) decreeing the forfeiture and cancellation of the license of the respondent corporation.

"2. Such dissolution and disposition of the property of the respondent shall be entrusted to a receiver. In view of the foregoing and pursuant to the provisions of subdivisions 4 and 5 of Section 182 of the Code of Civil Procedure in force, the People of Puerto Rico prays this Honorable Court to make an order for the appointment of a receiver in accordance with law."

Now, the respondent answered that motion by stating that—their answer appears on pages 21 and 22 of the transcript of record—that they had paid all the debts; that they had sent a certified copy of the decree forfeiting the charter of the corporation to the Executive Secretary's office of Puerto Rico, asking him to note the decree and the dissolution of the corporation; that it had paid all the debts and that it had transferred the properties to its stockholders.

I might mention, in passing, that my friend Colonel Rigby is in error when he states that the stockholders and the directors of this corporation, in asking and petitioning the Secretary's Office to note the decree of forfeiture and dissolution were acting under the statute as to the voluntary dissolution of corporations. We conceive that the dissolution was effected by the decree of forfeiture itself, and we felt that it should be entered and note should be taken of it in the Secretary's Office. There was no idea of compliance with or activity under the provisions of the statute providing for voluntary dissolution. We could not have done so had we so desired.

Now, the only question presented by this motion was as to whether it was necessary and whether the court had power to appoint a receiver, by reason of the fact that the corporation

had been dissolved by a decree of forfeiture. It stipulated that this question should be argued by brief.

In the brief of the government, however, a new ground was stated, as appears at pages 25 and 26 of the record, in which they said:

~~"The principal objective of the motion for the appointment of a receiver now under discussion is the preservation of the status quo (until the proceeding is terminated) with regard to the lands which defendant possesses in excess of 500 acres."~~

And on page 26 it discloses something of the theory and the ultimate intention of the government:

"It is not difficult to determine the intention of the legislator in this respect. Once the dissolution of the corporation is decreed by judgment in a quo warranto proceeding on the ground that it has been guilty of violating the 500 acre law, it was the legislator's intention that the government should retain a certain degree of control over the excess lands in order that its future distribution should comply with the fundamental spirit of the agrarian law—distribution among many farmers—and that said lands should not fall again into the same or a few hands."

The respondent objected that this new ground was not properly suggested and had not been presented by the motion, but attempted to meet it, nevertheless.

Now the court, upon this motion to appoint a receiver to liquidate the corporation, proceeded to appoint a receiver to operate the business of the corporation.

There is not one word about liquidation contained in the order appointing the receiver. The Circuit Court of Appeals makes mention of the great difference between what was asked for and what the court ordered.

MR. JUSTICE REED: What have you to say about paragraph 7 on page 129 of the record, with regard to the action to be taken by the receiver?

MR. BROWN: On page 129?

MR. JUSTICE REED: Yes. Is that section in effect?

MR. BROWN: Well, Section 7 says that the receiver, if the People of Puerto Rico shall elect to confiscate, shall take over this property.

MR. JUSTICE REED: Or to sell it.

MR. BROWN: Or to sell it, or transfer title to the ~~People of Puerto Rico~~ for the price fixed by the court, and in case they elect to have the property sold at public auction then the receiver shall proceed to sell in accordance with the plan which would be submitted to the previous approval of the court.

MR. JUSTICE REED: Well, I understand you to say there was nothing in the order which indicated anything further than operation?

MR. BROWN: In that respect I was mistaken. What I intended to say was that there was nothing in the order as to the liquidating or winding up of the affairs of the corporation.

MR. JUSTICE JACKSON: If there was no power under the law to appoint a receiver of the properties on the forfeiture of the charter, there could be a grab, immediately.

MR. BROWN: My contention is that immediately—

MR. JUSTICE JACKSON: There would be no power to save it from that grab.

MR. BROWN: My contention is, in the first place, that under the law the directors of the corporation whose charter has been forfeited are made trustees in liquidation, with full powers to dispose of the property and to distribute the balance among the stockholders.

THE CHIEF JUSTICE: Well, now, should we consider that first, then, in this matter?

MR. BROWN: Very well, then, I will do so. Because I think, as Your Honor says, that the order rests upon the proper construction of that statute.

MR. JUSTICE FRANKFURTER: In connection with the answer you gave as to the statute, will you be good enough to take into account whether under the Puerto Rican

law your court had no power to appoint a receiver other than the liquidating directors in case a showing is made that the liquidating directors will act contrary to the interests or will not act in accordance with interests of all those who may have an ultimate interest in the matter?

MR. BROWN: If I may answer that first, it is answered by Section 30 of the Corporation Law, which is found at page 13 of our brief.

MR. JUSTICE FRANKFURTER: Page 13?

MR. BROWN: Yes.

"When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Puerto Rico is situated, on application of any creditor or stockholder, may at any time, either continue the directors as trustee as aforesaid, or appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof, to collect the debts and property due and belonging to the corporation, with power to prosecute and defend in the name of the corporation or otherwise, all suits necessary or appropriate for the purposes aforesaid, or to appoint an agent or agents under them, or to do other acts that might be done by such corporation if in being that may be necessary for the final settlement of its unfinished business and the powers of such trustees or receivers may be continued so long as the courts shall think necessary for such purpose."

THE CHIEF JUSTICE: Your opponent says that is permissible, but they were not bound to do it, and said there would be good reasons why they should not do it.

MR. BROWN: In any event, if we are correct in our construction of Sections 27, 28, et seq. of the Corporation Law, as vesting in the directors all powers as trustees in dissolution, then I say that, whether the receiver can be appointed or not by the Supreme Court of Puerto Rico, he should only be appointed upon a showing that these trustees are incompetent or unable to perform their duties as such

trustees. And of course there was no such showing in this case.

MR. JUSTICE REED: That goes to saying that Section 182 (4) never authorizes it unless there is some showing of the impropriety of letting the directors wind up the corporation.

MR. BROWN: Yes.

MR. JUSTICE REED: And that is what the C.C.A. said below, was it not?

MR. BROWN: Yes; and that is in accordance with the construction placed upon this section by practically all of the Western courts. These sections are found in the codes of most of the Pacific States.

MR. JUSTICE REED: And against that we have to weigh the judgment of the Supreme Court of Puerto Rico in saying that was valid.

MR. BROWN: Yes.

THE CHIEF JUSTICE: And also some changes in phraseology which your opponent pressed here orally.

MR. BROWN: My opponent, Your Honor, was talking about the Corporation Law. Yes; he did make one reference to the difference in the California statute.

THE CHIEF JUSTICE: Now, you were talking about this Section 27 and what it meant.

MR. BROWN: I am.

THE CHIEF JUSTICE: Of course, if that has no application here, then there might have been a strong reason for the court's appointing a receiver. But, on the other hand, if it does apply, the argument, as I understand it, in the Court of Appeals below was that there was authority to appoint a receiver and it was within its discretion to appoint him because that statute authorized the liquidating of the corporation by its trustees.

MR. BROWN: Yes.

THE CHIEF JUSTICE: And I don't see how we are going to get anywhere with this case unless we get a little light on what Section 27 means.

MR. BROWN: I am about to attempt to tell Your Honor what I think it means, or what we think the authorities say that it means.

THE CHIEF JUSTICE: Well, there is an argument made that when it was transferred from California to Puerto Rico they left out certain words which indicate that in this kind of a proceeding the corporate officers, directors and trustees have no authority over the property.

MR. BROWN: Well, that brings me to my first point of difference with counsel for the petitioner. It has never been suggested, so far as I know, before it, has been suggested here now in this argument, that this Corporation Law of Puerto Rico or these sections derive from California. They are quite different.

On the other hand, I think it has always been assumed in Puerto Rico, though not so stated by the court, by the Supreme Court of Puerto Rico, that these sections of the Corporation Law derive from the State of New Jersey, and that they are substantially identical with Sections 53, 54, 55 and following of the Laws of 1896 as found in the Compiled Statutes of New Jersey of 1910. Reference to that is found on page 21 of my brief.

An examination of those sections of the New Jersey statute will show, will demonstrate that of all the corporation statutes in the United States the only ones that are identical with these sections of the Puerto Rico Corporation Law are these sections of the general corporation law of New Jersey. The Virginia Code contains several identical sections and, although I have made no reference to it here, one of the sections of the corporation law of South Carolina is identical with Section 27, I think it is, of our code.

So, as I say, the first point of difference is that we are not construing a statute that has been derived from California, but a statute that is derived from New Jersey and of which the common understanding is it was derived from New Jersey.

THE CHIEF JUSTICE: Now, it does set out *quo warranto* proceedings for excessive property holdings.

MR. BROWN: I assume so. I am talking about the corporation law; not about *quo warranto*.

THE CHIEF JUSTICE: I know you are, but whatever the corporation law may mean in New Jersey, it has to be construed the way your opponent says, in this *quo warranto* proceeding; and he makes the point that the *quo warranto* or forfeiture proceeding was taken out of the corporate statute because it has a companion piece with the *quo warranto* law in it.

MR. BROWN: The *quo warranto* law was originally enacted and approved in the year 1902. This corporation law, as counsel says, had its inception, the corporation law, the act to establish private corporations, from which these sections are taken, was enacted as a new and independent statute in 1911 and was approved March 9th of that year.

The code, Section 182, to which reference is made by counsel, is Section 182 of the Code of Civil Procedure of Puerto Rico, which was adopted, enacted and approved in 1904, in March, 1904. And it is substantially identical with the provisions of the Code of Civil Procedure of California, and I think identical with the provisions of the Code of Civil Procedure of Montana.

MR. JUSTICE REED: What do the references to the California Code mean that are printed in the petitioner's brief?

MR. BROWN: Well, they mean—

MR. JUSTICE REED: Are they so provided for by some statute of Puerto Rico?

MR. BROWN: Yes; the statute provides for the printing of the several statutes of Puerto Rico, and requires that the person or persons in charge of the printing should put before each statute section its equivalent in the—

MR. JUSTICE REED: The source?

MR. BROWN: The statute from which it is derived; yes.

MR. JUSTICE REED: I understood you to say these were not derived from California?

MR. BROWN: I say the Code of Civil Procedure, Section 182, is derived from California.

MR. JUSTICE REED: Yes.

MR. BROWN: But we say the provisions of the corporation law are derived from New Jersey, and not in any sense from California.

MR. JUSTICE REED: I am sorry; I misunderstood you.

MR. BROWN: Now, as Your Honor has pointed out to counsel, Section 27 of the Corporation Law provides that all corporations, whether they expire through limitation contained in the articles of incorporation, or are annulled by the Legislature or otherwise dissolved, shall be continued. That is a provision for continuing the corporation pending liquidation.

Section 28 provides: "Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys," and so forth.

In Section 30, which I have already read, it is provided "When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Porto Rico is situated," may at any time either continue the directors as trustees or appoint others.

Now these provisions have been construed by the court, and in general where the word "dissolution" in a statute of this character is unqualified, the courts have held that it included dissolution for any reason whatsoever, brought about by any reason whatsoever.

Where the term "dissolution" is qualified, as it is in this statute, and as it is in the New Jersey statute, the courts have held without exception that it includes and covers dissolution resulting from a forfeiture of the corporate franchise.

MR. JUSTICE ROBERTS: Are all those cases in your brief?

MR. BROWN: I will point them out to Your Honor. They are found at page 28 of our brief. The first two are New Jersey cases; Browne vs. Hammet is a South Carolina case, and Mieyr vs. Federal Surety Co. is an Arizona case.

The broad statement is made in an extensive notation found at 42 A. L. R. that the weight of authority is that where the term "dissolution" is unqualified that, with the exception of Texas, the courts have held that it covers dissolution effected by the forfeiture of the corporate charter; and that where it is qualified, as it is by the language contained in our statute, or similar language, it covers and includes every kind of dissolution. A dissolution, of course, can be effected in many different ways.

If it were true, as Colonel Rigby suggests, that the dissolution referred to was only the voluntary dissolution which is provided for in the law, then the provision or the statement that the corporate life is continued where the corporation expires through limitation or through being annulled by the Legislature or otherwise dissolved, is meaningless; and the statement that upon dissolution in any manner of the corporation, that is likewise meaningless.

Now, as I say, under the rules of construction laid down by the Civil Code of Puerto Rico, which were practically identical with the rules of construction or statutory construction in common law jurisdictions, the Supreme Court of Puerto Rico was not at liberty to disregard these words; those words qualifying the term "dissolution".

As this Court has said, and we cite the case of United States versus Standard Brewery:

"Nothing is better settled than that, in the construction of a law, its meaning must first be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it. . . ."

"It is elementary that all of the words used in a legislative act are to be given force and meaning (Washington Market Co. vs. Hoffman, 101 U.S., 112); and of course the qualifying words 'other intoxicating' in this act cannot be rejected. It is not to be assumed that Congress had no purpose in inserting them, or that it did so without intending that they should be given due force and effect."

Now, counsel cite Gibbs versus Morgan and State versus Second Judicial Circuit in their brief. But those cases have to do with the code of civil procedure, rather than with the corporation law of that state, and I cannot see that they are very pertinent. In each case the suit was brought by a stockholder against the corporation and its directors, who were alleged to be using their power as majority stockholders and directors to defraud the minority stockholders. And in a suit pending in each State a receiver was appointed.

If counsel had meant to infer that the Montana court discusses but does not conform to the general doctrine as to directors being trustees in liquidation, it is shown to be erroneous by Ferrell versus Evans, 25 Montana, from which we quote at the bottom of page 29. The court there says:

"Section 561 of the Civil Code constitutes the directors of a corporation dissolved for any reason trustees for the creditors and shareholders with full power to wind up its affairs, unless some other person be appointed for that purpose. No exception is made in case of insolvency. The intention of the legislature seems to have been to provide the most inexpensive and expeditious way for the administration of the affairs of a defunct corporation by confiding them to the hands of those who are best acquainted with them, and have a direct personal interest in preserving and appropriating the assets to their legitimate purposes, subject to an accounting or removal by a court of equity at the instance of a shareholder or a creditor whose rights are jeopardized or betrayed."

MR. JUSTICE JACKSON: Now, if these directors had

been acting as trustees and took over on dissolution, and the court found that they had an interest adverse to the policy of the act, for which the corporation had been dissolved, as manifested by the transfer of the properties to themselves and their stockholders; is it not in the court to supersede that with a disinterested proceeding?

MR. BROWN: I think perhaps that might have been done, had there been any such showing. But, in the first place, there was no mention made of it before the Supreme Court, and the Supreme Court did not base its appointment of a receiver upon the fact that they had transferred the property to their own stockholders.

MR. JUSTICE JACKSON: The thought came to me in connection with the court pointing out the policy of the act; didn't it do that?

MR. BROWN: It started out with the premise that the corporation was dead by reason of the forfeiture and that it could not buy any property and could not hold any property and had no further power to act in any respect; that the corporation law did not provide either for a continuation of the corporate life or, as the Supreme Court construed it, did not make the directors the trustees in liquidation. Therefore, there was nobody to liquidate and to wind up the affairs of the corporation. That was the premise, the first premise of the Supreme Court; and that we think was the basis of the order, and that, we think, was clearly erroneous.

Going back to the proper construction of Section 27 and the following sections, Puerto Rico was, of course, a civil law territory. Now, before Puerto Rico became a part of the United States, before it was taken over by the United States, the "trust fund" principle, the "trust fund" doctrine had been firmly established in all state and federal courts. Whether that "trust fund" doctrine would have been imported into Puerto Rico of its own force or of its own virtue, may be debatable. We say that the adoption of this statute, which was a type of statute adopted throughout the vari-

ous States of the United States, was for the recognized purpose of putting into statutory law the "trust fund" principle, the "trust fund" doctrine, and abrogating the harsh rules of the common law as to the reverting of real estate, the escheat of personal property and the cancellation of debts. That it was adopted, and similar statutes have been adopted throughout the various States, for that recognized purpose; that when this law and these sections were enacted in Puerto Rico, it is fairly to be assumed that they were brought there for the very purpose that the same statutes or similar statutes had been enacted for in the several States of the Union.

Now this Court in *Philippine Sugar Co. versus Philip- pines*, 247 U. S., had occasion to examine and construe Section 285 of the Civil Code of the Philippines. This Court said—this is page 31 of the brief:

"It is well settled that courts of equity will reform a written contract, where, owing to mutual mistake, the language used therein did not fully or accurately express the agreement and intention of the parties. The fact that interpretation or construction of a contract presents a question of law, and that, therefore, the mistake was one of law, is not a bar to granting relief. . . . This rule of equity was adopted in the Philippine Code without restriction; and the relief is afforded, under appropriate pleadings, without resort to an independent suit for reformation of the contract. The language of Sec. 285 is clearly broad enough to include relief for such mistakes of law; and the earlier decisions of the supreme court of the Philippine Islands, to which that court refers in its opinion, are not inconsistent with this conclusion. . . .

"It is also urged that, since the construction of Section 285 is a matter of purely local concern, we should not disturb the decision of the supreme court of the Philippine Islands. This court is always disposed to accept the construction which the highest court of a territory or possession has placed upon a local statute. . . . But that disposition may not be yielded to

where the lower court has clearly erred. * * * Here, the construction adopted was rested upon a clearly erroneous assumption as to an established rule of equity. The supreme court erred in refusing to consider the evidence of mutual mistake."

We say here that the decision of the Supreme Court was rested upon a clearly erroneous assumption as to the established rule of equity which was enacted into and adopted in Puerto Rico by these provisions of the Corporation Law that we are discussing.

MR. JUSTICE REED: Mr. Brown, do you contend that there is any difference in the power of the court of Puerto Rico to make this appointment as related to real estate and as related to personal property?

MR. BROWN: Yes, Your Honor. On the question as to the character of the appointment that was actually made, as apart from its general power to appoint a receiver, we contend that the appointment was invalid, among other reasons, because it turned over to the receiver all of the property of this corporation. It turned over not only the real property, legally held or legally acquired, but it turned over its moneys.

MR. JUSTICE REED: All its property.

MR. BROWN: Everything.

MR. JUSTICE REED: Now, there had been a judgment of dissolution against the corporation?

MR. BROWN: There had been a judgment of dissolution against the corporation.

MR. JUSTICE REED: Is it the theory of the court that it was assisting in this final liquidation after the judgment of dissolution?

MR. BROWN: Well, the theory of the court seems to be that, first, there was nobody else, there was no officer or other person authorized by law to care for and preserve this property or to liquidate its affairs; that seems to be the first premise. Then they say, it is true, later on, that anyway the

trustees in liquidation could not liquidate this property until after the People of Puerto Rico had exercised their option.

MR. JUSTICE REED: We must assume here, must we not, that the judgment by which the corporation was directed to be dissolved is to be considered as valid, now?

MR. BROWN: Oh, yes; there is no question about that. I might point out that that judgment directed the immediate dissolution and winding up of the affairs of the corporation; and of course this present order delays and postpones indefinitely that liquidation and winding up.

Had the appointment of a receiver been proper or necessary in any case, it would have been perfectly feasible for the court to have appointed a receiver for the lands, charged with their preservation pending such time as the People of Puerto Rico should have exercised their option. It has never been argued and never been contended, in the lower court or elsewhere so far as I know, that it was not a legitimate purpose and a legal act for the corporation to construct a sugar factory or purchase a sugar factory, to construct its sugar railroads or its docks or whatever was connected with the manufacturing end of the sugar business, or to negotiate or to make contracts with third parties for the purchase of sugar cane or for the grinding of sugar cane. All of those things are lawful acts of the corporation. They were not prohibited by any law, and the property that vested under the exercise of those powers, the mills, the railroads and the personal property, are all protected, as I said, by the Constitutional guaranties. The stockholders, as the ultimate beneficiaries, cannot be divested of those properties under the guise of an operating receivership by the court, as it has attempted to do in this case.

MR. JUSTICE REED: What about condemnation?

MR. BROWN: Well, as I understand, the condemnation clause refers to lands unlawfully held. Of course, the People of Puerto Rico can condemn anything, provided it be for a public purpose and provided that they make proper pro-

vision for the payment of a fair compensation, and furthermore, if the payment is made in advance, as the Organic Act requires.

MR. JUSTICE JACKSON: Is it your contention that the transfer of the property by dissolution defeats the power of the state to exercise its option?

MR. BROWN: Of course not. The stockholders, as the owners and as presently holding the title of these properties, certainly could not attack, they would not be heard to attack the title of the People of Puerto Rico if the court determined that these properties should be sold at public auction. The very purpose of putting this property in the possession of the stockholders, to whom it belonged, was to avoid any question about the fact that these properties had been sold to their persons. Some question might have been raised. They might have raised the same argument, although I don't see how they could, because *lis pendens* was adequate and all of this property was on file with the Secretary.

MR. JUSTICE JACKSON: The purchaser was with notice.

MR. BROWN. The purchaser was with notice. Furthermore, if the People of Puerto Rico had wanted to, if their only purpose had been the protection of this option, and if they did not deem *lis pendens* adequate, they could have done, as in other cases has happened, brought an injunction against the property.

Well, now, as we conceive it, the only property involved in this litigation, so far as the People of Puerto Rico are concerned, are the properties, are the lands that it was asserted had been illegally acquired.

THE CHIEF JUSTICE: If the government decided to sell the land, how would they proceed; would that be before a receiver, or before a special master?

MR. BROWN: Well, now, we have been attempting to find out, not only this corporation but a good many others, what the ultimate intention of the government was and what could be done under the *quo warranto* law. To that

end we have had numerous conferences, and we have not been able to find out. That is the reason these suits are pending.

THE CHIEF JUSTICE: Could they name a receiver for that?

MR. BROWN: I want to point out this because, while I do not think this amendment to the *quo warranto* law could in any wise affect the appointment of the receiver, because it must speak for the future, it does indicate what the government now intends shall be the procedure in the future, and it seems to me it provides what is very clearly an unconstitutional method.

This amendment is in the italicized section printed at page 16; it reads:

"For the purpose of carrying out the provisions of this section, the Supreme Court is hereby empowered to appoint receivers who, in behalf and with the approval of the Supreme Court shall have exclusive charge of the liquidation and sale of the property of the corporation or corporations affected. In all cases the receivers shall give preference, in the acquisition of lands to the Land Authority of Puerto Rico; which shall have a legal preferential option for the purchase of said lands for the fair price fixed by the final judgment; The receivers thus appointed shall be bound to initiate the sale of lands within a period of not to exceed six (6) months from the date the receivership is established. The Land Authority shall have a preferential right to purchase said lands for the fair value thereof, within a period of not to exceed one year, during which time said lands cannot be sold to any other person or entity. Said period of one year may be extended for one year more, with the approval of the Governor. After this period or periods, the lands shall be sold at public auction and the Land Authority may bid at the auction sale held to dispose of such lands. The Authority shall be entitled to priority or preference in the purchase of such lands at the public auction in those cases where it may bid a price equal to that offered by the highest bidder. The edicts advertising the public sale shall so recite."

THE CHIEF JUSTICE: We will stop here.
(Whereupon, at 2 o'clock p.m. the Court took its usual recess until 2:30 o'clock p.m.)

AFTER RECESS

MR. BROWN: May I inquire, Your Honor, if I have any more time?

THE CHIEF JUSTICE: Well, sir, you have about twenty seconds.

MR. BROWN: We contend that the appointment of the receiver is without jurisdiction because it involves property not involved in litigation and because it authorizes the creation of litigation upon the property.

MR. RIGBY: May I be permitted to say just one word?

THE CHIEF JUSTICE: Your time has expired.

(Whereupon, at 2:31 o'clock p. m. the oral arguments in the above-entitled matter were concluded.)

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JUN 20 1941

CHARLES ELMOORE DODDLEY
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM 1940

No. **113** 96

THE PEOPLE OF PUERTO RICO,

Petitioner,

vs.

RUBERT HERMANOS, INC., *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

✓ HENRI BROWN,
Attorney for Respondents.

JAIME SIFRE, JR.,
Of Counsel.

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Act to Establish a Law of Private Corporations of March 1, 1911:

Section 27	19
" 28	19
" 29	20
" 30	20
" 31	20

Act No. 47 of August 7, 1935:

Section 1	12, 21
" 2	21

Code of Civil Procedure of Puerto Rico:

Section 182	22
" 348	22

IN THE
Supreme Court of the United States

OCTOBER TERM 1940

No. 1073

THE PEOPLE OF PUERTO RICO,
Petitioner,
vs.

RUBERT HERMANOS, INC., *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

**BRIEF FOR RESPONDENTS IN
OPPOSITION**

Opinions Below

The opinion of the Supreme Court of Puerto Rico (R. 120-127) is not yet reported. The opinion of the Circuit Court of Appeals (R. 170-182) is reported in 118 Fed. (2nd) 752.

Jurisdiction

The Judgment of the Circuit Court of Appeals was entered March 31, 1941 (R. 183).

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

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Questions Presented

The order of the Supreme Court of Puerto Rico appointing a receiver was based upon the adjudication of certain primary rights and relief, to effectuate which the appointment of a receiver was made. This adjudication involved the construction of Puerto Rican statutes and the application of general principles of law.

The Circuit Court of Appeals, in reversing the decision and vacating the order appointing a receiver held that the Supreme Court of Puerto Rico erred in its construction of provisions of the Corporation Law and of the Code of Civil Procedure of Puerto Rico; that it likewise erred in failing to consider and apply settled principles of general law affecting the necessity and propriety of the appointment of a receiver and as to the legal effect of notice of *lis pendens*.

Review of the judgment of the Circuit Court of Appeals is sought here upon the ground that it violates the settled rule that the Supreme Court of Puerto Rico must not be overruled in its construction of local statutes in the absence of "clear or manifest error".

Specifically and separately stated these questions are:

(1) Was the construction of Sections 27, 28 and 29 of the Private Corporations Law of Puerto Rico by the Supreme Court of Puerto Rico clearly and inescapably wrong?

(2) Was the construction of Section 182, Par. 4, of the Code of Civil Procedure of Puerto Rico by the Supreme Court of Puerto Rico clearly and manifestly wrong?

The first of the "questions presented" set out in the Petition is:

"Did the Supreme Court of Puerto Rico possess the power or jurisdiction to appoint the Receiver?"

It is further stated that the Circuit Court of Appeals did not pass directly on this question although its opinion

apparently implies jurisdiction in the insular court, but that in any event the decision of the Supreme Court of Puerto Rico that it possessed such power and jurisdiction was not "inescapably wrong".

The power or jurisdiction of the Supreme Court of Puerto Rico to appoint a receiver to take possession of property not involved in the litigation is not a matter of local law and the lack of power or jurisdiction in such case is firmly settled by authority.

Statement

This Quo Warranto proceeding was instituted in the Supreme Court of Puerto Rico on January 28, 1936. Shortly thereafter petitioner caused a notice of *lis pendens* to be entered in the Registry of Property in which the defendant corporation's properties were inscribed.

The jurisdiction of the Supreme Court of Puerto Rico was based on two Acts passed at a Special Session of the Puerto Rican legislature, namely Act No. 33, approved July 22, 1935, and Act No. 47, approved August 7, 1935. These Acts amended "An Act Establishing Quo Warranto Proceedings", approved March 1, 1902, and for the first time conferred jurisdiction of quo warranto proceedings on the Supreme Court of Puerto Rico in certain cases.

Section 6 of Act No. 47 amends Section 2 of the original Act and prescribes the judgment that the Court must render in event that the Court finds that the acts charged in the information are "satisfactorily established".

The judgment so prescribed in case the defendant is a domestic corporation must "decree the dissolution thereof . . . the nullity of all acts done and contracts made by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and the People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for the property."

The amended information charged, that the defendant corporation was authorized to engage in agriculture and that it owned and controlled more than 500 acres of land which constituted a violation (1) of Joint Resolution No. 23 of the 56th Congress, First Session, approved May 1, 1900; (2) of its articles of incorporation and (3) of the public policy of the People of Puerto Rico, and the prayer was that the Court adjudge the corporate franchise to have been forfeited, decree immediate dissolution of the corporation, impose a fine, and for other relief.

The defendant corporation challenged the jurisdiction of the Court upon the ground that the two Acts purporting to confer jurisdiction were invalid as without the grant of legislative power in the Organic Law of Puerto Rico and as invading a legislative field reserved to the Congress.

The validity of Act No. 47 was also attacked upon the ground that the penalty provisions in Section 2 above set out constituted *ex post facto* legislation, deprived defendant corporations of due process and impaired the obligations of contracts valid and lawful at the time they were entered into. The Supreme Court of Puerto Rico held that the above mentioned Acts were within the powers granted the legislature, but upon the insistence of petitioner that the penalties prescribed in Act No. 47 were not sought to be imposed, declined to pass upon the validity of such provisions.

On July 30, 1938 the Supreme Court of Puerto Rico gave judgment finding the defendant corporation guilty of violation of the Joint Resolution of Congress and of its articles of incorporation in respect of its ownership and control of land in excess of five hundred acres.

The judgment decreed:

"The forfeiture and cancellation of the licenses of the defendant corporation and of its articles of incorporation and the immediate dissolution and winding up of the affairs of the corporation."

It also imposed a fine of \$3,000, costs and attorneys fees.

On the same day that the judgment was entered petitioner filed a motion for the appointment of a receiver upon the only ground that "such dissolution and disposition of the property of the defendant shall (should) be entrusted to a receiver".

The defendant corporation promptly appealed to the Circuit Court of Appeals for the First Circuit from the judgment and the motion for appointment of a receiver was not set for hearing.

The Circuit Court of Appeals reversed the judgment of the Supreme Court of Puerto Rico on the ground that Acts Nos. 33 and 47 were not within the grant of legislative powers (106 Fed. (2nd) 754) and was in turn reversed by this Court on certiorari (309 U. S. 543).

Both before the Circuit Court of Appeals and before this Court defendant raised the question of the invalidity of the penalty provisions of Act No. 47 and in both courts counsel for the People of Puerto Rico insisted that the penalties were in nowise involved in the case.

In both courts this contention of counsel for the People of Puerto Rico prevailed and neither court passed upon this question.

On the oral argument before this Court counsel for respondent made mention of the motion for the appointment of a receiver and obviously counsel for the People of Puerto Rico did not consider that this motion was a proper vehicle to invoke the imposition of the penalties.

Replying to a question by the Chief Justice as to how the People of Puerto Rico could exercise the option to confiscate real property of the defendant corporation, counsel for Puerto Rico, Colonel Rigby, replied:

"If it did, it would have, as I have said before, as we understand it, to file a supplemental bill or some new action in court; or begin a new action and proceed and give the respondents their day in court; because there is nothing in this case to authorize a summary proceeding upon the face of this judgment. There is nothing of that kind in this judgment at all."

Mr. Justice STONE asked:

"How is their choice evidenced, by a suit?"

Col. Rigby answered:

"I presume it would have to be a suit, by a suit, by some formal action of some kind. Nothing of that kind is here so far as the facts in this case are concerned. The prayer is only, as I read, in the usual form, under quo warranto procedure for forfeiture of charter, license to do business, dissolution of the corporation, fine and costs—and that is all that has been ordered. So, normally what would follow that in effect would be a requirement of dissolution by the stockholders in the manner pointed out by the corporation law, and, if necessary, the appointment of a receiver and the winding up of the business of the corporation, as the business of the corporation is wound up upon death of the corporation, for any purpose at all or for any reason."

Shortly after the judgment of this Court affirming the judgment of the Supreme Court of Puerto Rico, on March 27th, 1940, a motion duly verified and subscribed by all of the stockholders of the defendant corporation and accompanied by a certified copy of the judgment of the Supreme Court of Puerto Rico was filed in the Office of the Executive Secretary of Puerto Rico with the request that the dissolution of the corporation in conformity with the judgment be noted (R. 119). On March 28, 1940 a deposit to pay the fine of \$3,000 and costs was made with the Clerk of the Supreme Court of Puerto Rico (R. 17, 18) and such moneys were ordered to be paid to petitioner (R. 20).

Directors of the defendant corporation acting as statutory liquidators satisfied and extinguished all obligations of the corporation and with the unanimous consent of all stockholders transferred all of its properties to a civil partnership formed with all of the stockholders of the corporation as members. Thereafter on March 29, 1940 such transfer was notified to the Attorney General and

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members of the purchaser partnership stated their willingness to sell all such properties to the People of Puerto Rico (R. 109, 110).

The prompt disposition of the properties of the respondent corporation, the liquidation and winding up of its affairs was not only required by the judgment of the Supreme Court of Puerto Rico which ordered the *immediate* dissolution and winding up of its affairs, but in order to prevent serious loss and liability to fines and imprisonment by its directors under the provisions of Section 6 of the Quo Warranto Law as amended by Act No. 47.

The preservation of values by the continued cultivation of plantations of sugar cane, the operation of its railroad to comply with contracts with colonos, the harvesting of sugar cane and the operation of the sugar factory to grind cane owned by the corporation and contracted for with its colonos, constituted business which the defendant corporation was created and empowered to carry on by its articles of incorporation. The continuance of such business after a final judgment of forfeiture and dissolution would constitute disobedience to the mandate of the judgment and subject the directors to fine and imprisonment.

The result of the transfer was that the properties reverted to substantially the same situation as existed prior to the organization of the corporation, at which time the properties were owned and operated by the civil partnership Rubert Hermanos and there was no law limiting the ownership of land by partnerships or individuals in Puerto Rico.

On May 13, 1940, four days before the end of the Second Term of the Supreme Court of Puerto Rico, the mandate of this Court was received by the Clerk of that Court and on the same day petitioner requested the Court to set the motion for appointment of a receiver for hearing. Respondents filed an answer to the motion stating that the judgment of the Court had been complied with, the corporation dissolved, its obligations extinguished and its properties disposed of by unanimous agreement of its

stockholders and liquidators. The answer further set out that even if the corporation had not been liquidated, the Court was without jurisdiction to appoint a receiver because the quo warranto proceeding was no longer pending, because petitioner was not authorized by law to request the appointment of a receiver, because the motion did not state facts authorizing such appointment and that the appointment of a receiver would violate the due process clause of the Organic Act (R. 21, 22).

The motion was set for hearing on June 24, 1940 and on that date the parties stipulated that the motion be submitted for decision on briefs.

On July 5, 1940 petitioner filed its first brief in support of the motion and in this brief for the first time stated that the principal ground or objective of the motion was to preserve the status quo until the People of Puerto Rico could exercise its option to confiscate the real property of respondent or to have it sold at public auction, for which purpose Act No. 47 of 1935, Section 2, granted a term of six months running from the date of final judgment in the quo warranto proceeding (R. 23, 25, 26). Respondents answered that Act No. 47 properly construed required that the option be exercised before final judgment, that the term of six months was the term within which the properties must be confiscated or sold after final judgment (R. 87, 88, 89, 90, 91); that the directors of the respondent corporation were its statutory liquidators entitled to the possession of its properties and authorized to dispose of the same and wind up its affairs by Sections 27 and 28 of the "Act to establish a law of Private Corporations" (R. 16, 47).

Respondents also contended that Petitioner was estopped to request the confiscation or sale of the properties (R. 97-103).

The Supreme Court of Puerto Rico decided all questions raised adversely to respondents and entered an order appointing a receiver not upon the grounds set out in Petitioner's motion but upon the grounds first suggested in Petitioner's brief (R. 120-130). This order is correctly

summarized by the Circuit Court of Appeals (118 Fed. (2nd) 756, 757), as follows:

"Though the insular government asked for a receivership to liquidate the dissolved corporation, the order does not direct the receiver to proceed with the liquidation but on the contrary contemplates the full operation of the business for an indefinite period. The receiver is directed to take possession not only of the land illegally held but also of all the other property of the corporation, movable and immovable, of every kind and description. He is to continue managing said properties and cultivating the lands, until further order of court, doing all that may be necessary to maintain and preserve the business established by the defendant corporation. Specifically, he is authorized to employ, compensate and dismiss workmen, servants, agents and attorneys; to purchase and pay for materials, and accessories needed; to settle with creditors all claims in the ordinary course of business; to pay taxes; to initiate and defend all actions in behalf of or against the corporation; to institute all legal proceedings necessary for the purpose of obtaining possession and control of any property of the corporation; to 'give all security which might be necessary to secure loans of funds in interest of the trust confided to said receiver by these presents.' All moneys coming into the hands of said receiver as such are to be deposited in his name in one or more banks with the approval of the court, against which deposits the receiver shall have the right to draw by his personal order or by order of his agents. It is further provided that should the People of Puerto Rico request, in accordance with Act No. 47, the sale at public auction of the said properties, the receiver is authorized, to proceed 'in accordance with the plan which shall be submitted to the previous approval of this court or of the judge acting in the name of this court during its vacation, to sell said properties at public auction.' In addition, it is ordered that the defendant, its directors, officers and agents, and all those persons, partnerships or corporations claiming any right by reason of the assignment or transfer made by the defendant

corporation subsequent to the date on which the judgment of dissolution was entered, shall 'refrain from disposing of, conveying or selling in any manner movable or immovable property of which they might be in possession or which they may have under their control, and from interfering with or obstructing the receiver or impeding him in any form from taking possession of the said properties of said corporation.' "

This order was entered on July 26, 1940. Respondents appealed to the Circuit Court of Appeals for the First Circuit. Nearly a month after the appeal was allowed, the Attorney General of Puerto Rico filed in the Supreme Court of Puerto Rico a motion stating that "The People of Puerto Rico elects to have all lands in the possession of the respondent sold at public auction, and prays this Court to order the sale at public auction of the said real property by the receiver already appointed by this Court, after the same is assessed in conformity with the provisions of the Condemnation Proceedings Act now in force."

The Decision Below

In the opinion and decision of the Circuit Court of Appeals, there is no express declaration regarding the jurisdiction of the Supreme Court of Puerto Rico to make the order appointing a receiver. The contention of respondents, appellants below, that the Supreme Court of Puerto Rico was without jurisdiction to enter a new and different judgment after the final judgment of July 30, 1938 deciding the issues raised by the amended information and answer had been affirmed by this Court, was decided adversely by the Circuit Court of Appeals. The Court held that there could be more than one final judgment.

It is implicit in the decision, however, that the Circuit Court of Appeals deemed that the order appealed from was made without jurisdiction or in excess of jurisdiction in that the receiver was authorized and directed to take possession not only of land unlawfully owned by defendant,

but of all other property of every character belonging to the defendant corporation. As to this part of the order the Court said (118 Fed. (2nd) 759):

"This option relates only to the disposition of the excess acreage of land and has nothing to do with the other assets of the corporation of every kind and description, all of which the receiver is ordered to take into his possession by the order appealed from."

The Court also said:

"Nor have the People of Puerto Rico a sufficient interest in the premises to justify the Court in continuing the operation of the business through a receiver for an indefinite period, when the owners of the corporation after its franchise has been forfeited want to wind up the corporate affairs and promptly proceed to do so."

This language would seem to imply that in the opinion of the appellate court the order of the Supreme Court for an operating receivership for an indefinite period was without jurisdiction or in excess of jurisdiction.

The Circuit Court of Appeals sustained the adjudication of the Supreme Court of Puerto Rico that the provisions of Act No. 47 gave the People of Puerto Rico an option to confiscate or have sold at public auction lands of the defendant corporation unlawfully possessed and the right to exercise such option at any time within six months after final judgment in the quo warranto proceeding. It held that the appointment of a receiver was not a remedy necessary to effectuate the right so adjudicated because that right was adequately protected by a notice of *lis pendens* entered in the Registry of Property.

The decision of the Supreme Court of Puerto Rico upon which the order appointing a receiver was based adjudicated for the first time two other questions: first, that Sections 27, 28 and 29 of the Private Corporations Law are not applicable to dissolutions resulting from a decree of forfeiture of the corporate franchise and that in such case the directors of the corporation so dissolved are not statutory

trustees in liquidation; second, that paragraph 4 of Section 182 of the Civil Code of Puerto Rico made the appointment of a receiver mandatory in cases where a corporation had forfeited its corporate rights. The Circuit Court of Appeals reversed the Supreme Court of Puerto Rico as to these two questions and its decision in this respect petitioner seeks to have reviewed by this Court.

Statutes Involved

The pertinent portions of the applicable statutes are set out in Appendix, *infra*, pages 19-22.

Argument

I

Petitioner contends that Act No. 47 gives an option to confiscate or have sold at public auction all of the real property of the defendant corporation and that the order authorizing and directing the receiver to take possession of all of the property of every nature of the corporation was necessary and proper.

Petitioner is in error.

The option is conferred by Section 2 of the Act establishing Quo Warranto proceedings, as amended by Section 1 of Act No. 47 of 1935, in the following language:

"When any corporation by itself or through any subsidiary or affiliated entity is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered."

The Court was without jurisdiction to appoint a receiver of property not involved in the litigation, in which

the People of Puerto Rico had no interest. *In re Richardson's Estate*, 294 Fed. 349, 357; *Smith v. McCullough*, 104 U. S. 25; *Staples v. May*, 87 Cal. 178.

II

Petitioner maintains that the decision of the Supreme Court holding that Sections 27, 28 and 29 of the Private Corporations Law of Puerto Rico are not applicable to and do not include dissolutions of corporations by judgments in quo warranto proceedings forfeiting corporate charters, is clearly right and in any event not so inescapably wrong as to warrant reversal by the Circuit Court of Appeals. For this reason Petitioner thinks that the decision of the Circuit Court of Appeals violates the rule established by this Court in *Sancho Bonet, Treasurer, v. Texas Co.*, 308 U. S. 463, 471.

It is submitted that the Supreme Court of Puerto Rico was clearly and unmistakably wrong in this, its first and only construction of the above mentioned sections of the Private Corporations Law.

The Private Corporations Law of Puerto Rico is generally assumed to have been adopted from the "General Corporations Act" of New Jersey of April 21, 1896. Its provisions are similar to those statutes of this nature in the several states. It had no prototype or antecedent in the laws in force in Puerto Rico prior to its enactment.

The purpose and effect of provisions of like or similar type in state laws have long been settled by uniform decisions of the highest courts of the States before Puerto Rico adopted the law.

As to provisions similar to or identical with Sections 27, 28 and 29 of the Private Corporations Law of Puerto Rico, it has uniformly been held that the effect of such provisions is to abrogate the principles of the common law as to reversion of the real estate, escheat of personal property and extinguishment of debts of dissolved corporations.

13 *American Jurisprudence*—"Corporations,"—
Sec. 1365.

Provisions of this tenor constitute a part of the charter of every corporation created by or under the statutes in which they are included. *Ferguson vs. Miners' & M. Bank*, 3 Sneed (Tenn.) 609 (*Evans v. Illinois Surety Co.*, 298 Ill. 101, 131 N. E. 262). They are embodiments of equitable doctrines and afford legal remedy where before there was none. *Mason v. Pewabic Min. Co.*, 66 Fed. 395.. The unqualified term "dissolution" in such statutes has been held in all but one jurisdiction (Texas) to include dissolutions resulting from forfeiture of the corporate franchise.

The term "dissolution" qualified as in the instant statute has been held, without exception, by the Courts to include dissolution by decree of forfeiture.

Havemeyer v. Superior Court, 84 Cal. 327;

Watts vs. Vanderbilt, 45 Fed. (2nd) 968-70.

The Supreme Court of Puerto Rico has repeatedly held that where Puerto Rico has adopted statutes of a state it would follow the construction of such statute by the courts of the State of origin.

Rios v. Richards, 24 P. R. R. 514;

People vs. Benitez, 19 P. R. R. 235;

Bithorn vs. Ball, 17 P. R. R. 549, 554;

Chavier v. Giraldez, 15 P. R. R. 145.

There is no pretense that the language of Sections 27, 28 and 29 is ambiguous.

The construction given to these sections of the statute by the Supreme Court of Puerto Rico violates the plain letter of the law, runs counter to the well-settled construction by the highest courts of the state or states from which the statute derives. It ignores the universally recognized purpose for which statutes of this type have been enacted in the different states.

And this clearly erroneous construction presents a situation where reversal by the Circuit Court of Appeals is proper and warranted. *Philippine Sugar E. D. Co. v. Philippines*, 247 U. S. 385, 389, 390.

III

Petitioner asserts that the officers and directors of the defendant corporation whether considered as directors and officers or as liquidating trustees, have abdicated a trust imposed on them by law to retain the properties and assets of the corporation until the People of Puerto Rico had decided whether to exercise the option to confiscate or have the properties sold at public auction and until the motion for appointment of a receiver had been decided and that the transfer of such properties and more particularly a transfer to a partnership composed of all of the stockholders constituted "an abdication of the trust".

It is argued that abdication of the trust is a ground for the displacement of such directors or liquidating trustees and the appointment of a receiver agreeable to the usages of a court of equity. Petitioner says that this power rests on subdivision 5 of Section 182 of the Code of Civil Procedure.

This theory and argument is advanced for the first time in this Court. It was not suggested to the Circuit Court of Appeals. In the Supreme Court of Puerto Rico, subdivision 4 of Section 182 of the Code of Civil Procedure of Puerto Rico was the subdivision of the Section relied upon by petitioner (R. 27, 63) and this is the paragraph and the only paragraph or subdivision upon which the Supreme Court of Puerto Rico, in the decision appealed from, rests its jurisdiction (R. 122). See *Rubert Hermanos, Inc. vs. People of Puerto Rico*, 118 Fed. (2nd) at page 759.

It is clear, therefore, that in this particular and as to this question the Circuit Court of Appeals did not disturb or overrule a decision of the Supreme Court of Puerto Rico on a matter of local law because no such decision was ever made.

Assuming, however, that this theory and argument is open to petitioner here, it is untenable because the power of the Supreme Court of Puerto Rico was not properly called into exercise under paragraph 5 of Section 182 and because there was no abdication of trust.

Neither subdivision 4 nor 5 of Section 182 of the Puerto Rican Code of Civil Procedure, which are identical with

paragraphs 5 and 6 of Section 564 of the Code of Civil Procedure of California, authorize the appointment of a receiver after judgment. 22 *California Jurisprudence*, page 451, Sec. 33: Subdivision 5, authorizing the appointment of a receiver in all other cases where receivers have heretofore been appointed by the usages of courts of equity, simply means that in addition to particular instances mentioned in preceding subdivisions appointment of receiver should be made by courts of competent jurisdiction, as courts of equity, in other suits in which power would have been employed; it confers no new power, creates no ground for appointment of receivers other and distinct from those theretofore existing.

Bateman v. Superior Court, 54 Cal. 285, 288;
Frerch Bank case, 53 Cal. 495, 553, 554.

As pointed out by the Circuit Court of Appeals, paragraph 4 of Section 182 of the Code of Civil Procedure only preserves to the courts jurisdiction to supplant statutory trustees upon proper showing of an interested party, agreeably to the usages of courts of equity (118 Fed. 2nd 759).

There was and is no claim that the People of Puerto Rico either owned or had a lien on any of the property of the defendant corporation. It belonged to the stockholders of the corporation and after the payment of debts of the corporation such property or its proceeds was distributable among the stockholders. Section 31, Private Corporations Law. Sections 28 and 29 of the same Act expressly empower the directors of a dissolved corporation, as statutory trustees, to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders after paying its debts; to prescribe the terms and conditions of the sale of the corporate property and to sue for and recover debts and property.

The duties of the statutory trustees are measured by their powers and by the principles of law and equity applicable to the conditions. *Rossi v. Caire*, 174 Cal. 74, 81.

It was not a necessary part of the statutory duty of the directors-trustees to sell the property otherwise than to settle the corporate affairs. If they had money to pay all debts and expenses and all other corporate affairs were disposed of, it would be no abuse of their discretion if they merely transferred the property to the stockholders as tenants in common according to their interests, leaving it to them to do with it what they pleased. *Rossi v. Caire*, *supra*, 82.

The final judgment of the Supreme Court of Puerto Rico was affirmed by this Court on March 25, 1940, in the middle of the grinding season, when the factory of defendant corporation was in full operation. It was incumbent upon the directors of the corporation to take immediate action by which the operation of the factory could be continued to avoid the total loss of the ripe sugar cane belonging to its colonos that it was under contract to grind, and its own cane. It was likewise necessary to protect growing crops, to comply with provisions of contracts for advances and other assistance to colonos and for these and other reasons to continue operating the railroad. Furthermore, a paralyzation of factory operations during the grinding season would occasion a loss of many thousand dollars daily by reason of continuing salaries, wages and overheads. The corporation after final judgment forfeiting its franchise and ordering its immediate dissolution, could no longer continue any of these operations.

The action of the directors-trustees in paying the debts and distributing the property of the defendant corporation was in obedience to the express mandate in the final judgment ordering that the affairs of the defendant corporation be immediately wound up.

Usages of courts of equity and principles of equity are not matters of local law.

The Circuit Court of Appeals said:

"The People of Puerto Rico do not need a receiver to protect the option. If and when the time comes for the court to decree a sale of the land at public auction a master can be appointed to carry through the sale.

The land will still be there. Meanwhile, the interest of the People of Puerto Rico is protected by a *lis pendens* notice which was entered in the Registry of Property shortly after the institution of the quo warranto proceedings, which notice the corporation unsuccessfully sought to have cancelled." 116 Fed. (2nd) 759, 760.

The correctness of this statement is not challenged, in any event not directly or expressly challenged by petitioner.

The appointment of a receiver, on account of the serious consequences arising from an improvident exercise of this power, is hedged with all the rules formulated by courts of equity as guides in the exercise of powers inherent in a court of equity. There must be a showing of a danger that the property may become lost, materially injured or destroyed. A receiver will not be appointed where an injunction, restraining order, *lis pendens* or other legal remedy would be adequate:

Jones v. Smith, 40 Fed. 314;

U. S. v. Masich, 44 Fed. 10;

A. G. Col v. Superior Court, 196 Cal. 604, 613, 614.

Conclusion

The decision of the Circuit Court of Appeals in the particulars complained of by petitioner is correct. It constitutes no violation of the rule established by this Court in *Sancho Bonet, Treasurer, v. Texas Co., supra*, and presents no question of importance calling for a review by this Court.

As to other questions decided by the Circuit Court of Appeals which Petitioner deems correctly decided, Respondents propose to file a Cross-Petition for a writ of certiorari.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

HENRI BROWN,
Attorney for Respondents.

JAIME SIFRE, JR.,
Of Counsel.

APPENDIX

Pertinent statutory provisions of Puerto Rican Statutes

Sections 27, 28, 29, 30 and 31 of an Act entitled "An Act to Establish a Law of Private Corporations", approved March 9, 1911:

"Section 27.—*Corporate Existence Pending Dissolution.* All corporations, whether they expire through the limitation contained in the articles of incorporation or are annulled by the Legislature, or otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital; but not for the purpose of continuing the business for which they were established."

"Section 28.—(As amended by Act of April 13, 1916, page 68.) *Directors as Trustees Pending Dissolution.* Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, so far as such moneys and property shall suffice. They shall have power to meet and act under the by-laws of the corporation and, under regulations to be made by a majority of the said trustees, to prescribe the terms and conditions of the sale of such property, or may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of the said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequently thereto, the surviving directors or director shall be the trustee or trustees thereof, as the case may be, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and

property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this Act relative to the winding up of the affairs of such corporation and to the distribution of its assets."

"Section 29.—*Powers and Liabilities of Trustees in Liquidation.* The directors constituted trustees as aforesaid shall have power to sue for and recover the aforesaid debts and property by the name of the corporation and shall be suable by the same name, or in their own names, or individual capacities for the debts owing by such corporation, and shall be jointly and severally responsible for such debts to the amount of the money and property of the corporation which shall come to their hands or possession as such trustees."

"Section 30.—*Judicial Appointment of Liquidators.* When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Puerto Rico is situated, on application of any creditor or stockholder, may at any time either continue the directors as trustees as aforesaid, or appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof, to collect the debts and property due and belonging to the corporation, with power to prosecute and defend in the name of the corporation or otherwise, all suits necessary or appropriate for the purpose aforesaid, or to appoint an agent or agents under them, or to do other acts that might be done by such corporation if in being that may be necessary for the final settlement of its unfinished business and the powers of such trustees or receivers may be continued so long as the courts shall think necessary for such purpose."

"Section 31.—*Distribution of Assets by Trustees or Liquidators.* The said trustees or liquidators shall pay ratably, so far as its assets shall enable them, all the creditors for the corporation, who prove their debts in the manner directed by the court or by the law of civil procedure. If any balance remain after the payment of such debts and necessary expense, the same shall be distributed among the stockholders."

Sections 1 and 2 of Act No. 47, approved August 7, 1935, amending paragraphs 2 and 6 of the "Act Establishing Quo Warranto Proceedings", approved March 1, 1902:

Section 1, amending Section 2 of the Quo Warranto Law:

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

Section 2, amending Section 6 of the Quo Warranto Law:

"Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall decree the dissolution of the defendant if it be a domestic corporation, the prohibition to continue to do business in the country if it be a foreign corporation, the nullity of all acts and contracts realized by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in cases of condemnation proceedings."

Section 182 of the Code of Civil Procedure:

"A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or jointly interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

2. After judgment, to carry the judgment into effect.

3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity."

Section 348 of the Code of Civil Procedure:

"An action is deemed to be pending from the time of its commencement until its final determination upon appeal or until the time for appeal has passed, unless the judgment is sooner satisfied."

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1941

No. 96

THE PEOPLE OF PUERTO RICO,
Petitioner,
vs.

RUBERT HERMANOS, INC., *et al.,*
Respondents.

BRIEF FOR RESPONDENTS

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941

No. 96

THE PEOPLE OF PUERTO RICO,
Petitioner,
vs.

RUBERT HERMANOS, INC., *et al.*,
Respondents.

BRIEF FOR RESPONDENTS

Jurisdiction

The jurisdiction of this Court is derived from Section 240(a) of the Judicial Code of the United States, as amended by Act of February 13, 1925.

Opinion Below

The opinion of the Supreme Court of Puerto Rico, July 26, 1940 (R. 120-127) is printed in Spanish in 57 D. P. R. 958. Volume 57 of the Reports of the Supreme Court of Puerto Rico in English has not been printed.

The opinion of the Circuit Court of Appeals, March 31, 1941, is reported in 118 F. (2nd) 752.

The opinion of the Supreme Court of Puerto Rico upon which the judgment of forfeiture was entered July 30, 1938, is printed in the transcript of record, pages 285 to 304, of case No. 582 here at the October Term 1939.

The English edition of Puerto Rico Reports in which this opinion will appear has not yet been printed.

The opinion of the Circuit Court of Appeals, September 27, 1939, upon the appeal from the judgment of forfeiture is reported in 106 F. (2nd) 754.

The opinion of this Court reversing the Circuit Court of Appeals, March 25, 1940, is found in 309 U. S. 543.

Statement

The Petitioner, People of Puerto Rico, filed an information in the nature of Quo Warranto in the Supreme Court of Puerto Rico, against Respondent Rubert Hermanos, Inc., a Puerto Rican corporation, in which it alleges that the respondent corporation was violating its articles of incorporation and the Joint Resolution of Congress approved May 1st, 1900 (U. S. C. Tit. 48, Sec. 752), by owning and controlling agricultural land in excess of five hundred acres. It prayed that the Court adjudge that respondent had forfeited its corporate franchise, order its immediate dissolution, prohibit it to do business in Puerto Rico and impose a proper fine with all of the pronouncements which in equity and justice are pertinent in the premises.

Respondent demurred to the information upon the ground that the statutes purporting to confer jurisdiction upon the Supreme Court of Puerto Rico were invalid.

Immediately upon filing the information Petitioner filed notices of *lis pendens* in the Registry of Property in which the real property of respondent corporation was inscribed.

Respondent moved the Court to cancel the notices of *lis pendens* and the motion was denied.

An answer to the Information as amended upon striking certain immaterial allegations was filed by Respondent.

The cause was tried by the Court composed of the Chief Justice and Associate Justices of the Supreme Court of Puerto Rico.

Respondent presented no evidence but rested upon its challenge to the jurisdiction of the Court predicated upon the alleged invalidity of the jurisdictional statutes.

The Supreme Court of Puerto Rico entered judgment (R. 15, 16) in which, after finding that the respondent corporation was engaged in agriculture and was guilty of owning and controlling 12,188 acres of land in violation of law and violation of the Joint Resolution of Congress approved May 1st, 1900, and of its own articles of incorporation, it decreed: "the forfeiture and cancellation of the license of the defendant corporation and of its articles of incorporation is hereby ordered and decreed, as well as the immediate dissolution and winding up of the affairs of said corporation. The defendant corporation is adjudged to pay the costs and disbursements of this proceeding, including the sum of two thousand dollars (\$2,000) as attorney's fees. The defendant corporation is sentenced to pay a fine in the sum of \$3,000.00".

From this judgment respondent corporation appealed to the Circuit Court of Appeals for the First Circuit. That Court reversed the judgment upon the ground that the statutes conferring jurisdiction on the Supreme Court of Puerto Rico were invalid (106 F. (2nd) 754). This Court granted certiorari, reversed the Circuit Court of Appeals and affirmed the judgment of the Supreme Court of Puerto Rico in *Puerto Rico v. Rubert Hermanos, Inc.*, 309 U. S. 543.

On the same day that the Supreme Court of Puerto Rico entered judgment, Petitioner filed motion for the appointment of a receiver (R. 16, 17), alleging:

"1. This Honorable Court has recently rendered judgment in the above entitled case (1) ordering the dissolution of the respondent corporation and (2) decreeing the forfeiture and cancellation of the license of the respondent corporation.

2. Such dissolution and disposition of the property of the respondent shall be entrusted to a receiver.

In view of the foregoing and pursuant to the provisions of subdivisions 4 and 5 of Section 182 of the Code of Civil Procedure in force, the People of Puerto Rico prays this Honorable Court to make an order for the appointment of a receiver in accordance with law."

This motion was set for hearing on November 9, 1938 and upon the request of petitioner was "left in abeyance" (R. 17).

On March 27, 1940, a motion duly verified, subscribed by all of the stockholders of the respondent corporation and accompanied by a certified copy of the judgment of the Supreme Court of Puerto Rico, was filed in the office of the Executive Secretary of Puerto Rico, with the request that the dissolution of the corporation in conformity with the judgment be noted (R. 119).

On March 28, 1940, a deposit to pay the fine, attorneys fees and costs imposed by the judgment, was made with the Clerk of the Supreme Court of Puerto Rico (R. 17, 18), and such monies were paid to petitioner by order of the Court (R. 20).

Directors of the respondent corporation acting as statutory liquidators satisfied and extinguished all obligations of the corporation and with the unanimous consent of the stockholders transferred all of its properties to a civil partnership of which all of the stockholders of the corporation on the date of its dissolution were partners.

On March 29, 1940, the Attorney General of Puerto Rico, as attorney for Petitioner, was notified in writing of such transfer and the members of the partnership stated their willingness to sell all of such properties to the People of Puerto Rico (R. 109, 110).

The properties so transferred to the civil partnership were the same properties that were owned and operated by the civil partnership, Rubert Hermanos and were transferred by that partnership to the respondent corporation at the time that it was organized.

On May 13, 1940, petitioner requested the Court to set the motion for appointment of a receiver for hearing.

Respondents filed an answer and opposition to the motion (R. 21, 22), in which the directors of Rubert Hermanos, Inc. alleged that the judgment of the Court had been complied with, the corporation dissolved, its obligations extinguished, and its property remaining after the payment of its debts distributed among its stockholders. They further alleged that even if the corporation had not been liquidated, the Court was without jurisdiction to appoint a receiver because the *quo warranto* proceeding was no longer pending and that the Quo Warranto Act did not authorize the Court to appoint a receiver in such a proceeding nor the Attorney General or People of Puerto Rico to request the appointment of a receiver in such a proceeding. And finally, respondents contended that assuming jurisdiction and statutory authority the motion did not state facts justifying the appointment of a receiver, that the appointment would deprive respondents of their property without due process of law and amount to judicial legislation violative of the Organic Act prohibition against *ex post facto* legislation.

The motion for appointment of a receiver was stipulated to be submitted upon the motion, the answer and opposition and briefs to be filed simultaneously by the parties.

In the brief filed by petitioner in support of the motion a new and additional ground for the appointment of a receiver was asserted as follows:

"The principal objective of the motion for the appointment of the receiver now under discussion is the preservation of the status quo (until the proceeding is terminated) with regard to the lands which defendant possesses in excess of 500 acres."

"This matter is governed by Act No. 47 (Special Session) approved on August 7, 1935. This statute which amends the Quo Warranto Act of 1902, provides in the second paragraph of Section 2 that 'The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting

from the date on which final sentence is rendered.”
(R. 25)

In their reply brief respondent urged upon the Court that this new ground should not be considered, that the grounds and all of the grounds upon which such a motion is based must be set out clearly and specifically in the motion and constituted a jurisdictional prerequisite.
(R. 78-85)

Assuming that the ground proposed by petitioner's brief could be considered as incorporated in the motion, respondents contended that under the well settled doctrine theretofore followed and approved by the Supreme Court of Puerto Rico, the motion so amended was insufficient to invoke the jurisdiction of the Court to appoint a receiver.
(R. 34-39)

As to this ground respondents further contended that the right to exercise the option to confiscate the land illegally held or have it sold at public auction no longer existed because under a correct construction of Section 2 of Act No. 47, the term fixed for the exercise of the option ended upon entry of the final judgment and that in any event the option provision was invalid as *ex post facto* and violative of the due process and equal protection clauses of the Organic Act.

Finally, respondents maintained that by Section 27 of the Private Corporations Act of Puerto Rico the corporate existence was continued after the judgment of forfeiture for the purpose of prosecuting and defending suits by or against it and of enabling it to settle and close its affairs, to dispose of and convey its property and to divide its capital and that Section 28 of the same Act made the directors of the respondent corporation trustees thereof pending liquidation with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders after paying the debts so far as such moneys and property shall suffice. And it further maintained that such statutory liquidators could only be removed or substituted,

or a receiver appointed upon a showing of misconduct or failure to discharge the trust imposed upon them.

Expressly or inferentially, the Supreme Court of Puerto Rico decided adversely to respondents all objections and grounds of opposition to the appointment of a receiver that they had raised.

It proceeded to appoint a receiver of all of the property and assets of the defunct respondent corporation not for the purpose of liquidating and winding up the affairs of the corporation, but expressly for the purpose of conducting a business and carrying on activities that the liquidators of the corporation could not lawfully conduct or engage in and which would, if so engaged in or so conducted by liquidators of the corporation, have made them liable to penalties of fine and imprisonment. Furthermore, the order appointing the receiver authorized him to conduct such business for an indefinite time with the funds of the corporation and to encumber the properties to obtain such loans of money as he might deem necessary.

From this decision and order respondents appealed to the Circuit Court of Appeals for the First Circuit. In connection with their appeal respondents assigned as error the decision of the Supreme Court of Puerto Rico overruling the jurisdictional objections and grounds above specified.

Assignments 20 and 21 specifically pointed out as error the lack of jurisdiction of the Supreme Court of Puerto Rico to appoint a receiver for the purpose of carrying on the business theretofore conducted by the dissolved corporation and to make the properties liable for the expense of carrying on such business.

Respondents pointed out to the Circuit Court of Appeals in their analysis of the decision and order of the Supreme Court of Puerto Rico appointing a receiver that although the Court declared that it had power to appoint a receiver to liquidate and wind up the affairs of respondent corporation, it did not appoint a receiver for such a purpose.

After quoting from the opinion of the Supreme Court of Puerto Rico holding that the People of Puerto Rico has such an interest as entitles it to request the appointment of a receiver for the protection of the right granted by Section 2, Par. 2 of the Quo Warranto Law (R. 126, 127), at page 13 of appellant's brief they stated:

"Whatever doubt might exist as to the purpose of the order by reason of statements in the opinion as to the power of the Court to compel execution of its judgment, disappears upon the reading of the order itself.

There is no suggestion of an execution of the provisions of the judgment, no provisions for the liquidation and winding up of the affairs of the defendant corporation.

Instead of the 'immediate dissolution and winding up of the affairs' of the corporation, liquidation and perhaps dissolution is indefinitely postponed. For a judgment of immediate dissolution and winding up of the defendant corporation and the distribution of its property among its creditors and stockholders the order indefinitely postpones both."

And at page 15:

"It will be noted that although the option to confiscate or have sold at public auction is limited to real or immovable property 'unlawfully held' the order authorizes and requires the receiver to take possession and control of all property which was possessed by Rubert Hermanos, Inc., both real and personal, movable and immovable. The receiver is thus authorized to take possession of, and the defendant corporation, its directors, assignees, and transferees are required to deliver to him, cash on hand, contracts, choses in action, factory, buildings, railroad, lands, and growing crops, cattle, trucks, motorized equipment, implements and utensils that belonged to or were possessed by the defendant corporation at some indefinite time.

The receivership is made an operating receivership and required to carry on a business that the defendant corporation could no longer conduct.

The receiver is further authorized to create liens upon the property so placed in his possession to secure loans in amounts limited only by the discretion of the receiver.

Property that can neither be confiscated nor sold at the option of the People of Puerto Rico is thus employed and subjected to liability without the consent of stockholders or creditors and without any vestige of lawful authority."

The Decisions Below

The Supreme Court of Puerto Rico decided:

- (1) That par. 4 of Article 182 of the Code of Civil Procedure confers jurisdiction to appoint a receiver. (R. 122)
- (2) That when a corporation is dissolved by a valid judgment declaring the forfeiture of its charter, from that moment it ceases to exist for all purposes, unless there is some statutory provision continuing its existence, and it is without any power to contract or to acquire, possess or transfer properties, or to sue or to be sued, or to exercise any other franchise or powers granted by its articles of incorporation. (R. 123)
- (3) That there is no statute in Puerto Rico providing that a corporation which has ceased to exist by virtue of a judicial judgment continues to have legal existence to liquidate its affairs and sell its property without the intervention or permission of the Court. That the provisions of the corporation law of Puerto Rico (Sec. VI, Arts. 27 and 28) are applicable only to a voluntary dissolution agreed by the shareholders of a corporation or by the expiration of the term fixed for its duration. (R. 123, 124)
- (4) That in any event neither the extinct corporation nor its liquidators can dispose of its properties and liquidate until the option granted to the People of Puerto Rico by the second paragraph of Section

2 of Law No. 47 of August 7, 1935, to confiscate or have sold at public auction the properties illegally possessed by the extinct corporation, has expired. (R. 124, 125) And that the term for the exercise of such option is six months from and after the date of final judgment—in the instant case November 13, 1940. (R. 122, 123)

- (5) All acts of the liquidating trustees for the purpose of liquidating and winding up the affairs of the respondent corporation after the date of the judgment which ended the legal existence of the corporation are legally void. (R. 123)
- (6) The People of Puerto Rico is an interested party to obtain the appointment of a receiver for the protection of the right granted by Sec. 2, par. 2 of the Quo Warranto Law. (R. 126) In this case, a petition has been presented by an interested party in the future holding of lands illegally possessed by the defunct corporation. (R. 126, 127)
- (7) "Our statute (Art. 182, C. of Civ. Pro.) grants us the discretionary power to appoint a receiver when the forfeiture of a corporation is decreed, without the necessity of the filing of any petition by any interested party in the corporate property." (R. 126)
- (8) That the option to confiscate or have sold at public auction would be lost and the fundamental object of the law and public policy which motivated the proceedings defeated if the statutory liquidators were permitted to transfer and convey the properties and liquidate the extinct corporation. (R. 123)

The Circuit Court of Appeals held:

- (a) That the Supreme Court of Puerto Rico had correctly construed Section 1 of Act No. 47 as meaning that the People of Puerto Rico have six months after the judgment of dissolution becomes final within which to apply for confiscation or sale at public auction. (118 Fed. (2nd) 758)

- (b) That the Supreme Court of Puerto Rico erred in its construction of sections 27, 28 and 30 of the Private Corporations Law of Puerto Rico which are clear and unambiguous. That by such statutory provisions the existence of the respondent corporation was continued for the purposes of liquidation and the directors of the corporation made trustees thereof with full power to settle its affairs. (118 Fed. (2nd) 759)
- (c) That these statutory trustees, like trustees in general, are amenable to the jurisdiction of a court of equity and may be called into account there for any neglect of duty or abuse of power. But until they are so called into account in an independent action or proceeding by a party in interest no court has any excuse for interference. (118 Fed. (2nd) 759)
- (d) That the statutory provision relied on by the Supreme Court of Puerto Rico, namely, par. 4 of Section 182 of the Code of Civil Procedure, does not mean that a receiver must be appointed as a matter of course in case of dissolution, even by forfeiture. It only preserves to the courts jurisdiction to supplant the statutory trustees upon a proper showing by an interested party, agreeably to the usages of courts of equity. (118 Fed. (2nd) 759)
- (e) That no such showing of necessity to supplant the statutory trustees was made in the case at bar and that the People of Puerto Rico have no sufficient interest in the premises to justify the court in continuing the operation of the business for an indefinite period when the owners of the corporation, after its franchise has been forfeited, want to wind up the corporate affairs and promptly proceed to do so. (118 Fed. (2nd) 759)
- (f) That the interest of the People of Puerto Rico, namely, that of protecting the option, only extends to excess acreage of land and has nothing to do with other assets of the corporation of every kind and description, all of which the receiver is

commanded to take into his possession by the order appealed from. (118 Fed. (2nd) 759)

- (g) That the appointment of a receiver to preserve the status quo was not necessary, as the People of Puerto Rico had availed itself of another and adequate remedy by filing notice of *lis pendens* in the Registry of Property shortly after institution of the quo warranto proceeding. (118. F. (2nd) 759, 760)

Statutes Involved

Statutory provisions referred to and examined herein read as follows:

"An Act to Establish a Law of Private Corporations", approved March 9, 1911:

"Section 27.—*Corporate Existence Pending Dissolution.* All corporations, whether they expire through the limitation contained in the articles of incorporation or are annulled by the Legislature, or otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defendant suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital; but not for the purpose of continuing the business for which they were established."

"Section 28.—(As amended by Act of April 13, 1916, page 68.) *Directors as Trustees Pending Dissolution.* Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, so far as such moneys and property shall suffice. They shall have power to meet and act under the by-laws of the corporation, and, under regulations to be made by a majority of the said trustees, to prescribe the terms and conditions of the sale of such property, or may sell all or

any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of the said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequently thereto, the surviving directors or director shall be the trustee or trustees thereof, as the case may be, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this Act relative to the winding up of the affairs of such corporation and to the distribution of its assets."

"Section 29.—*Powers and Liabilities of Trustees in Liquidation.* The directors constituted trustees as aforesaid shall have power to sue for and recover the aforesaid debts and property by the name of the corporation and shall be suable by the same name, or in their own names, or individual capacities for the debts owing by such corporation, and shall be jointly and severally responsible for such debts to the amount of the money and property of the corporation which shall come to their hands or possession as such trustees."

"Section 30.—*Judicial Appointment of Liquidators.* When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Puerto Rico is situated, on application of any creditor or stockholder, may at any time, either continue the directors as trustee as aforesaid, or appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof, to collect the debts and property due and belonging to the corporation, with power to prosecute and defend in the name of the corporation or otherwise, all suits necessary or appropriate for the purposes aforesaid, or to appoint an agent or agents under them, or to do other acts that might be done by such corporation if in being

that may be necessary for the final settlement of its unfinished business and the powers of such trustees or receivers may be continued so long as the courts shall think necessary for such purpose."

"Section 31.—*Distribution of Assets by Trustees, or Liquidators.* The said trustees or liquidators shall pay ratably, so far as its assets shall enable them, all the creditors for the corporation who prove their debts in the manner directed by the court or by the law of civil procedure. If any balance remain after the payment of such debts and necessary expense, the same shall be distributed among the stockholders."

"Code of Civil Procedure," approved March 10, 1904.

"Section 182.—A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or jointly interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable; and where it is shown that the property or fund is in danger of being lost, removed or materially injured.
2. After judgment, to carry the judgment into effect.
3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.
4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.
5. In all other cases where receivers have heretofore been appointed by the usages of the courts of equity."

Act No. 47, approved August 7, 1935, amends Sections 2 and 6 of the "Act Establishing Quo Warranto Proceedings", approved March 1, 1902. The Spanish text is the official text of Act No. 47. Errors appearing in the text of the English edition are corrected in copying these sections.

Section 6, as amended by Act No. 47, was again amended by Act No. 183, approved May 14, 1941.

The pertinent parts of Sections 2 and 6 so amended with that part of Section 6 added by Act No. 183 in italics, read as follows:

"Section 1. When any corporation by itself or through any other subsidiary or affiliated entity or agent in unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, in the same proceeding, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final judgment is rendered.

In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

"Section 2. Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall decree the dissolution of the defendant if it be a domestic corporation, the prohibition to continue to do business in the country if it be a foreign corporation, the nullity of all acts and contracts realized by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these

purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in condemnation proceedings. *For the purpose of carrying out the provisions of this section, the Supreme Court is hereby empowered to appoint receivers who, in behalf and with the approval of the Supreme Court shall have exclusive charge of the liquidation and sale of the property of the corporation or corporations affected.*

In all cases the receivers shall give preference, in the acquisition of lands to the Land Authority of Puerto Rico, which shall have a legal preferential option for the purchase of said lands for the fair price fixed by final judgment. The receivers thus appointed shall be bound to initiate the sale of lands within a period of not to exceed six (6) months from the date the receivership is established. The Land Authority shall have a preferential right to purchase said lands for the fair value thereof, within a period of not to exceed one year, during which time said lands cannot be sold to any other person or entity. Said period of one year may be extended for one year more, with the approval of the Governor. After this period or periods, the lands shall be sold at public auction and the Land Authority may bid at the auction sale held to dispose of such lands. The Authority shall be entitled to priority or preference in the purchase of such lands at the public auction in those cases where it may bid a price equal to that offered by the highest bidder. The edicts advertising the public sale shall so recite." (Italics supplied.)

POINT I

The construction of sections 27, 28, 29, 30, 31 and 32 of the Law of Private Corporations of Puerto Rico by the Supreme Court of Puerto Rico is clearly and inescapably wrong.

(a) The Common Law rules as to reverter of real property, escheat of personal property, extinguishment of debts

and credits, and abatement of action resulting from the dissolution of corporations were abrogated by the "trust fund doctrine" established and applied by State and Federal courts of equity.

The equitable rules and principles of the trust fund doctrine were embodied in and enlarged by statutes prototypes of the Puerto Rican statutes. A harmonious and universally accepted interpretation of the purpose and effect of such statutes was adopted by State and Federal courts.

Upon enacting these sections of the Private Corporations Law in 1911, Puerto Rico adopted without restriction the equitable principles and rules that they embodied.

(b) The construction of these sections by the Supreme Court of Puerto Rico abolishes the "trust fund doctrine" and the equitable principles informing such statutory provisions and reverts to the evils and mischief of the common law rules that the trust fund doctrine and statutes based thereon were adopted to remedy.

(c) Construction of the statutory provisions here involved by the Supreme Court as only applicable to voluntary dissolutions of corporations and not including dissolutions by forfeiture of the corporate charter violates every applicable rule of statutory construction. It not only ignores the purpose for which the provisions were enacted and its spirit but the plain letter of the law as well. It is clearly wrong under decisions of this Court.

(a)

Under the doctrine of the Common Law upon the expiration or forfeiture of a corporate charter its power to own property ceased, its real property reverted to the original owner, its personal property escheated to the Crown or State, debts to and from the corporation were extinguished.

These common law rules were abolished as a result of the "trust fund doctrine" that the property of a business

corporation instituted for the purpose of gain or private interest upon dissolution of the corporation, after payment of its debts, equitably belongs to its stockholders and that dissolution can not deprive creditors or stockholders of their rights in its property. *Bacon v. Robertson*, 18 How. 480; *Church of Jesus Christ of L. D. S. v. United States*, 136 U. S. 1, 47.

The doctrine involved the corollary that the rights of stockholders in respect of corporate property are in no wise affected, or impaired by a legislative annulment of the corporate powers; nor by a judicial forfeiture of the charter. *Greenwood v. Union Freight R. Co.*, 105 U. S. 13; *New York B. & E. R. Co. v. Motil*, 81 Conn. 466, 71 Atl. 563. It was held that under this doctrine the stockholders of a corporation become vested, when its existence ceased, with legal title to its property as tenants in common. *Pewabic Mining Co. v. Mason*, 145 U. S. 349; *Stearns Coal & Lumber Co. v. Van Winkle*, 221 Fed. 590.

The "trust fund doctrine" was adopted and applied by all state and federal courts.

In many if not a majority of the States statutes have been enacted and are in force embodying and extending this equitable doctrine. Such statutes generally designate the directors of a dissolved corporation as its trustees or provide for the appointment of trustees by the courts. Some of such statutes continue the dissolved corporation for the purpose of liquidation and winding up its affairs, either for an indefinite or a specified limited term of years.

Statutes prolonging the existence of dissolved corporations for the purpose of liquidation, constitute a part of the charter of every corporation created by or under statutes in which such a provision is included. *Ferguson v. Miners & M. Bank*, 3 Sneed 609. They have been described as the "embodiment of equitable doctrines" and afford legal remedy where before there was none. *Mason v. Pewabic Min. Co.*, 66 Fed. 395. Their purpose is manifestly to provide for the administration of corporate property by dissolved corporations themselves during the period granted for settling and winding up the affairs.

General Electric Co. v. West Ashville Improvement Co., 73 Fed. 386. They are intended to enable corporations to dispose of their assets to wind up their affairs without the intervention of a receiver unless the appointment thereof should be necessary to preserve the assets, make disposition thereof and to conserve and protect the interests of the creditors and the stockholders. *H. M. McCarthy Co. v. Dubuque District Court*, 201 Iowa 912, 208 N. W. 505. The effect of such statutory provisions is to abrogate the principles of common law as to reverter of real property, escheat of personal property and extinguishment of debts. *Folger v. Chase*, 18 Pick 63; *Strout v. United Shoe Machinery Co.*, 195 Fed. 313.

The purpose and effect of such statutes making the directors of a dissolved corporation its trustees in liquidation is accurately stated in 13 American Jurisprudence, as follows:

"In many states statutes have been enacted designating the directors of a dissolved corporation as its trustees or providing for the judicial appointment of trustees for the dissolved corporation. Such statutes do not impair the obligation of the contracts of creditors.

"The preponderance of authority in respect of such statutes is in favor of the doctrine that the general term 'dissolution' is applicable to dissolutions produced by the forfeiture of corporate charters; but in some jurisdictions the position has been taken that only voluntary dissolutions are within the purview of statutes in which this term is used without any qualification.

"Under some statutes receivers are appointed for the dissolved corporations instead of trustees."

"The general effect of statutes designating or providing for the appointment of trustees for dissolved corporations is to constitute the property and rights of the dissolved corporation a trust fund to be administered by the trustees for the purposes specified by the legislature. The doctrine generally accepted with

little dissent is that statutes of the kind under review vest the legal title to the corporate property in the trustees. It is patent, therefore, that such a statute abrogates the common-law rules with respect to the reversion of real property of a dissolved corporation to its grantors or donors, the escheat of the personal property to the sovereign and the extinguishment of the debts owed by or to such corporation."

13 American Jurisprudence—"Corporations," pp. 1203, 1204.

"The purpose of statutes of the kind under discussion is manifestly to provide for the administration of corporate property by dissolved corporations themselves during the period granted for settling and winding up the affairs and to allow the retention of the title to their property by the corporations themselves unless trustees or receivers are appointed in pursuance of a statute providing for such appointment. The effect of these provisions for extension is to abrogate the common-law rules relative to the reversion of the corporate real estate, the escheat of the corporate personal property, and the extinguishment of the debts owing by or to the corporation at the time of its dissolution."

13 American Jurisprudence, p. 1206.

Sections 27, 28, 29, 30 and 31 of the Private Corporation Law of Puerto Rico are statutes of this type.

Section 27 continues the corporate existence of all corporations dissolved for the purpose of prosecuting and defending suits, to settle and close their affairs, to dispose of and convey their property and divide their capital.

Section 28 makes the directors of a dissolved corporation its trustees pending liquidation, with full powers for such purpose.

Section 29 prescribes the powers and the liabilities of such trustees.

Section 30 authorizes Insular District Courts, upon the application of a creditor or stockholder, to either continue

the directors as trustees or appoint one or more persons as liquidators.

Section 31 imposes on the trustees or liquidators the duty of paying ratably the creditors of the corporation so far as the assets are sufficient and to distribute the balance of assets among the stockholders.

Section 32 prevents the abatement of suits by or against the corporation at the time of its dissolution.

These provisions are substantially the same as those of the General Corporation Law of New Jersey (Laws 1896, Chap. 185). Sections 53, 54 and 55, Comp. Stat. 1910. They are also practically the same as Sections 3810, 3812, 3813 and 3815 of the 1919 Virginia Code (Laws 1902-3, Chap. 270, Secs. 30, 31, 33 and 35).

With the enactment of these sections of the Private Corporation Act in 1911, Puerto Rico adopted fully and without restriction the rules and principles of equity embodied therein.

(b)

If the "trust fund doctrine" and the equitable principles declared by statutes of this character are not in Puerto Rico by virtue of the sections of the Law of Private Corporations here considered, they form no part of its law and jurisprudence. There is no other statute or law in Puerto Rico declaring the effect and consequences of the dissolution of corporations, preserving the rights and interest of creditors and stockholders in corporate property and assets after dissolution, or regarding the devolution of such property and assets.

Doubtless, the legislature, in enacting the amendments to the "Act establishing quo warranto proceedings" found in Act No. 47, approved August 7, 1935, intended to revive and put into force the common-law rules affecting the property and assets of dissolved corporations that had long since been abrogated in the United States.

Section 2 of that Act amending Section 6 of the Quo Warranto Act provided:

"Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment shall decree the dissolution of the defendant, if it be a domestic corporation, the prohibition to continue to do business in the country if it be a foreign corporation, *the nullity of all acts and contracts realized by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by said corporation in the public registries of Puerto Rico.*" (Italics supplied.)

Once the deeds transferring real property to the corporation are annulled and the entries in the Registry of Property of such transfers are cancelled, the only titles left outstanding are those of the grantors. As the dissolved corporation can not own property and has no succession or heirs, the personal property escheats to the People of Puerto Rico and the contracts evidencing indebtedness to or from the corporation are annulled and the debts are extinguished.

Of course, in the judgment entered in this case the Supreme Court of Puerto Rico did not decree the nullity of the acts and contracts of the respondent corporation nor did it decree the cancellation of the registry entries, but the italicised mandatory provisions of the statute have never been declared to be invalid and the Supreme Court has declined to pass upon them.

At page 12 of the Reply Brief for Petitioner to Respondents' Brief in Opposition, counsel clearly indicate the view and contention that the "trust fund doctrine" is not applicable in Puerto Rico. Whether this results from the absence of statutory provisions or from Act No. 47 they do not state. Nor do they state what doctrine or rule is applicable. They say:

"C. Respondents' assertion that (Brief, p. 16):

"There was and is no claim that the People of Puerto Rico either owned or had a lien on any of the property of the defendant corporation";

and that the property (ibid, p. 16):

"belonged to the stockholders of the corporation and after the payment of the debts of the corporation such property or its proceeds was distributable among the stockholders",

is very plainly mistaken,—or at least is subject to very great qualification. Plainly, the statutory option on the property, given to The People of Puerto Rico by Act No. 47 of 1935, to have the real property of the company either condemned ('confiscated', upon payment of the just price), or sold at public auction, constituted a very distinct and very important 'interest' in the property, in the nature either of ownership or of a lien, which took precedence of the rights, certainly, of the stockholders,—and possibly, to some extent at least, of the creditors,—which it was the duty of a court of equity to protect; * * *

And this statement is amplified in the footnote:

"To the extent perhaps of requiring the marshalling of assets, in case the personal property should not prove sufficient to pay the creditors in full."

The order of the Supreme Court of Puerto Rico by which the money and personal property of the dissolved corporation is taken to be expended and employed by the receiver appointed for the purposes of the business which he is charged with conducting, without compensation therefor, would seem to indicate that the Supreme Court of Puerto Rico also is of the opinion that this personal property does not constitute a trust fund for creditors and stockholders.

The decision of the Supreme Court of Puerto Rico, as interpreted by counsel for petitioner, rejects a legal consequence of the "trust fund doctrine" firmly established by American courts and that is that while the legislature may provide for the dissolution of a corporation whether it is indebted or not, it can not impair the obligation of the existing contracts between it and third persons or take

away the vested rights of its creditors. It *can not* constitutionally pass any law which deprives creditors of the right to resort to the property of the corporation for the satisfaction of their claims.

People v. O'Brien, 45 Hun 519, rev'd 111 N. Y. 1,
18 N. E. 602; 2 L. R. A. 255;

Lothrop v. Stedman, 42 Conn. 584.

(c)

The Supreme Court of Puerto Rico holds:

"The provisions of our corporation law (Section VI, Arts. 27 and 28) are applicable only to a voluntary dissolution agreed upon by the shareholders of a corporation or by the expiration of the term fixed for its duration."

Section 27 reads:

"All corporations, whether they expire through the limitation contained in the articles of incorporation *or are annulled by the Legislature or otherwise* dissolved, shall be continued as bodies corporate etc." (Italics supplied.)

And Section 28 reads:

"Upon the dissolution *in any manner* of a corporation the directors shall be the trustees thereof pending the liquidation * * *." (Italics supplied.)

Annulment of a corporate charter is a legislative forfeiture. It is in no sense a voluntary dissolution agreed upon by the shareholders.

Corporations may be dissolved in several different manners and by different methods.

"A corporation may be wound up and dissolved either voluntarily or involuntarily. It is said by Blackstone (1 Bl. Com. 485) that 'a corporation may be dissolved: (1) By act of Parliament, which is bound-

less in its operations; (2) by the natural death of all its members, in case of an aggregate corporation; (3) by surrender of its franchises into the hands of the King, which is a kind of suicide; (4) by forfeiture of its charter, through negligence or abuse of its franchises; in which case the law judges that the body politic has broken the condition upon which it was incorporated, and thereupon the incorporation is void.' This enumeration of the methods of dissolution has received the approval of the courts. To these methods, however, may be added: (1) By expiration of the charter through lapse of time, as in this country at the present time corporations are in most jurisdictions created for a limited period only; (2) by the happening of a condition subsequent upon which by the terms of the charter the corporate existence is *ipso facto* to terminate."

13 American Jurisprudence, pp. 1157, 1158.

A voluntary dissolution by agreement of stockholders is but one of the several methods or "manners" of dissolution.

The Supreme Court of Puerto Rico, in construing these sections of the Corporation Law as only applicable to voluntary dissolutions, has disregarded and in effect elided the words "or otherwise dissolved" from Section 27 and the words "in any manner" from Section 28.

As the Circuit Court of Appeals points out, these sections are clear and unambiguous.

Counsel for Petitioner attempt to support the holding of the Supreme Court of Puerto Rico by two theories that they propose:

First, that the words "or otherwise dissolved" and "dissolution in any manner" "may very well and reasonably be construed as the insular Supreme Court does construe them in its opinion (R. 123-127), as meaning to use the words 'dissolved', 'dissolution', in Sections 27, 28, 30, 32 and 33 of the same 'Article VI' entitled 'Dissolution', of the Private Corporations Law; in the same sense in which the word 'dissolved' is used in the immediately pre-

ceding Section 26, which is the first section of that Article. That is to say that the words 'dissolved', 'dissolution', wherever used throughout that Article VI of the statute (Secs. 26-32, inclusive), *mean the same thing defined in the first section (Sec. 26); viz., voluntary dissolution in any manner.* 'Whenever in the judgment of the board of directors it shall be deemed advisable that a corporation organized under this act shall be dissolved'; *but to mean only cases falling within that category.*" (Petitioner's Brief, p. 15.)

Second: That Section 182 of the Code of Civil Procedure, pars. 4 and 5, must be construed as qualifying and limiting the language of these Sections of the Corporation Law to the extent of excluding from their operation cases where a corporation has been dissolved because it has forfeited its corporate rights. (Petitioner's Brief, pp. 24-25, Petitioner's Reply Brief, pp. 2-5.)

In support of this theory and contention, counsel cite *San Antonio Gas Co. v. State*, 22 Tex. Civ. App. 118, 54 S. W. 289, 293, 294; *Gibbs v. Morgan*, 9 Idaho 100, and *State v. Judicial Circuit*, 15 Mont. 324.

The Civil Code of Puerto Rico establishes certain rules of statutory construction substantially the same as those applied in common law jurisdictions.

Section 14 of the Civil Code provides:

"When a law is clear and free from all ambiguity the letter of the same shall not be disregarded, under the pretext of fulfilling the spirit thereof."

Section 15 of the Civil Code reads:

"The words of a law shall generally be understood in their most usual signification, taking into consideration not so much the exact grammatical rules governing the same, as their general and popular use."

And Section 19 of the same Code declares:

"The most effectual and universal manner of discovering the true meaning of a law, when its expressions

are dubious, is by considering the reason and spirit thereof or the cause or motives which induced its enactment."

Under these rules of construction it was obvious error for the Supreme Court of Puerto Rico to disregard and give no effect to the words "otherwise dissolved" and "in any manner". And this is true under the decisions of this Court.

"Nothing is better settled than that, in the construction of a law, its meaning must first be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it. *Lake County v. Rollins*, 130 U. S. 662, 670, 671, 32 L. Ed. 1060, 1063, 1064, 9 Sup. Ct. Rep. 651; *Bate Refrigerating Co. v. Sulzberger*, 157 U. S. 1, 33, 39, L. Ed. 601, 610, 15 Sup. Ct. Rep. 508; *United States v. First Nat. Bank*, 234 U. S. 245, 258, 58 L. Ed. 1298, 1303, 34 Sup. Ct. Rep. 846; *Caminetti v. United States*, 242 U. S. 470, 485, 61 L. Ed. 442, 452, L. R. A. 1917F, 502, 37 Sup. Ct. Rep. 192, Ann. Cas. 1917B, 1168." * * *

"* * * It is elementary that all of the words used in a legislative act are to be given force and meaning (*Washington Market Co. v. Hoffman*, 401 U. S. 112, 115, 25 L. Ed. 782, 783); and of course the qualifying words 'other intoxicating' in this act cannot be rejected. It is not to be assumed that Congress had no purpose in inserting them, or that it did so without intending that they should be given due force and effect."

United States v. Standard Brewery, 251 U. S. 216, 217, 218.

San Antonio Gas Co. v. State, *supra*, does not support the construction of the Supreme Court of Puerto Rico. The Texas Court of Civil Appeals was construing a statute in which the word "dissolution" was not qualified. That

statute—Vernon's Stat. 1911, Art. 1206 (Rev. Stat. Art. 682 (606)),—reads as follows:

“Upon the dissolution of any corporation, unless a receiver is appointed by some court of competent jurisdiction, the president and directors or managers of the affairs of the corporation at the time of the dissolution, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of such corporation with full power to settle its affairs.”

We think that no decision can be found construing statutes similar to those of Puerto Rico, in which the term “dissolution” is qualified by “in any manner”, “otherwise dissolved”, or words of like import, that holds that such statutes do not include dissolutions by judgment of forfeiture and any other kind of dissolution. In all of such decisions that we have been able to find the statutes were construed to cover dissolutions effected by forfeiture either judicial or legislative.

Grey, Atty. Gen. v. Newark Plank Road Co., 65 N. J. L. 603, 48 Atl. 557;

American Surety Co. v. Great White Spirit Co., 58 N. J. Eq. 526, 43 Atl. 579;

Watts v. Vanderbilt, 45 Fed. (2nd) 968;

Browne v. Hammet, 133 S. C. 446, 131 S. E. 612;

Mieyr v. Federal Surety Co., 34 Pac. (2nd) 982.

It may be noted that Section 32 of the Corporation Law prevents the abatement of any suit against *any corporation which may become dissolved* before final judgment and requires notice to the trustees or liquidators before judgment can be entered.

Section 182 of the Code of Civil Procedure of Puerto Rico was enacted and came into force in 1904. The Law of Private Corporations of Puerto Rico was enacted in 1911 and was the last legislative expression as to the liquidation of corporations. If there was anything in Section

182 opposed to the provisions of the Corporation Law it was repealed by implication.

The mere reading of paragraph 4 of Section 182 of the Code of Civil Procedure demonstrates that it did not deal with corporate dissolution effected in a manner not covered by Sections 27 to 31 of the Corporation Law.

We are at a loss to understand why counsel cite *Gibbs v. Morgan, supra*, and *State v. Second Judicial Circuit, supra*, as supporting the construction of Sections 27 and 28 of the Corporation Law by the Supreme Court of Puerto Rico. In neither of these cases is there any construction or in fact the slightest reference to the corporation law of the State of Idaho or of the State of Montana. The statute construed and applied in both cases is identical with paragraph 5 of Section 182, Code of Civil Procedure of Puerto Rico. Both of the cases view on certiorari the action of the lower courts in appointing receivers of corporate properties, *pendente lite*, in suits brought by minority stockholders against corporations and majority stockholders charged with using their control of the corporation for their own benefit and in fraud of plaintiff stockholders.

The decision in the Idaho case (*Gibbs v. Morgan*) relies on the Montana case (*State v. Second Judicial Circuit*) as authority.

As we have above stated, neither of these cases is remotely in point. It may be well to point out, however, that the decisions of the Supreme Court of Montana interpreting similar provisions of the Corporation Law of that State which in turn are substantially identical with the California Statute, are flatly in conflict with the construction by the Supreme Court of Puerto Rico. In *Ferrell v. Evans*, 25 Mont. 444, 65 Pac. 714, the Court states:

"Section 561 of the Civil Code constitutes the directors of a corporation dissolved for any reason trustees for the creditors and shareholders with full power to wind up its affairs, unless some other person be appointed for that purpose. No exception is made in case of insolvency. The intention of the legislature seems to have been to provide the most inexpensive and expe-

ditions way for the administration of the affairs of a defunct corporation by confiding them to the hands of those who are best acquainted with them, and have a direct personal interest in preserving and appropriating the assets to their legitimate purposes, subject to an accounting or removal by a court of equity at the instance of a shareholder or a creditor whose rights are jeopardized or betrayed. *Havemeyer v. Superior Court*, 84 Cal. 327, 24 Pac. 121, 10 L. R. A. 627, 18 Am. St. Rep. 192."

A rule of statutory construction so frequently stated and applied by this Court is that when a statute or code is adopted from another State or country it will be presumed to have been adopted with the construction placed upon it by the courts of that state or country before its adoption. Such a construction is regarded as of great weight or at least as persuasive.

And where a statute or code provision has been enacted for a clearly defined purpose establishing a new doctrine of law or providing a new remedy and such a statute has been adopted throughout the several states in substantially the same form, this presumption or intent becomes controlling in its construction.

The Legislature of Puerto Rico since the change of sovereignty and establishment of Civil Government under the new regime has adopted many codes and statutes from state codes and statutes. Among the codes so adopted are the Penal Code, Code of Criminal Procedure, Code of Civil Procedure, Political Code and Corporation Law, Banking Law, Quo Warranto Law, Laws establishing extraordinary remedies of the Common Law.

The Supreme Court of Puerto Rico has repeatedly declared that it would and should construe all such laws of American origin in conformity with the construction placed upon them by the courts of the states of origin.

This is particularly true of the Code of Civil Procedure.

Perhaps the last reported case construing the provision of the Code of Civil Procedure is *Lagarette v. Treas-*

urea of Puerto Rico, reported in 55 Decisiones de Puerto Rico, p. 22, but not as yet published in the English reports.

The Court says in this case:

"As Section 79, par. 2, comes from Section 393 of the Code of Civil Procedure of California it is presented that the Puerto Rican Legislature adopted it with the interpretation given it in the State of its origin.

Therefore we should adopt the interpretation given by the Supreme Court of California."

While this rule is not mandatory, it certainly should not be disregarded when laws with a long legislative history showing their origin, purpose and application are adopted into a territory where no similar antecedent legislation existed.

Under the authority of *Philippine Sugar E. D. Co. v. Philippines*, 247 U. S. 385, 62 L. Ed. 1177, this decision of the Supreme Court of Puerto Rico should have been reversed, as it was by the Circuit Court of Appeals. This Court, in the case cited, reversed the construction of Section 285 of the Philippine Code of Civil Procedure for the reasons appearing in the opinion, from which we quote:

"It is well settled that courts of equity will reform a written contract, where, owing to mutual mistake, the language used therein did not fully or accurately express the agreement and intention of the parties. The fact that interpretation or construction of a contract presents a question of law, and that, therefore, the mistake was one of law, is not a bar to granting relief. *Snell v. Atlantic F. & M. Ins. Co.*, 98 U. S. 85, 88-91, 25 L. ed. 52, 54, 55; *Griswold v. Hazard*, 141 U. S. 260, 283, 284, 35 L. ed. 678, 688, 689, 11 Sup. Ct. Rep. 972, 999. This rule of equity was adopted in the Philippine Code without restriction; and the relief is afforded, under appropriate pleadings, without resort to an independent suit for reformation of the contract. The language of Sec. 285 is clearly broad enough to include relief for such mistakes of law; and the earlier decisions of the supreme court of the Philippine

Islands, to which that court refers in its opinion, are not inconsistent with this conclusion." . . .

... . It is also urged that, since the construction of Section 285 is a matter of purely local concern, we should not disturb the decision of the supreme court of the Philippine Islands. This court is always disposed to accept the construction which the highest court of a territory or possession has placed upon a local statute. *Phoenix R. Co. v. Landis*, 231 U. S. 578, 58 L. ed. 377, 34 Sup. Ct. Rep. 179. But that disposition may not be yielded to where the lower court has clearly erred. *Carrington v. United States*, 208 U. S. 1, 52 L. ed. 367, 28 Sup. Ct. Rep. 203. Here, the construction adopted was rested upon a clearly erroneous assumption as to an established rule of equity. The supreme court erred in refusing to consider the evidence of mutual mistake, and its judgment must be reversed."

Here, as in the *Philippine* case, the construction adopted rested upon a clearly erroneous assumption as to an established rule of equity and as to the purpose for which the statute was adopted.

In *Yu Cong Eng v. Trinidad*, 271 U. S. 500, this Court construed a Philippine statute which had been attacked on constitutional grounds in the Philippine Courts. The Supreme Court of the Philippines, in order to save its constitutionality, limited general and broadly inclusive language of the Act to make it operate on what it deemed that the Legislature might lawfully prohibit. It said:

"What the court really does is to change the law from one which by its plain terms forbids the Chinese merchants to keep their account books in any language except English, Spanish or the Filipino dialects, and thus forbids them to keep account books in the Chinese, into a law requiring them to keep certain undefined books in the permitted language."

This Court held that this construction ignoring the plain letter of the law constituted judicial legislation and re-

versed the Supreme Court of the Philippines upon this point. It said:

"The suggestion has been made in argument that we should accept the construction put upon a statute of the Philippine Islands by their supreme court as we would the construction of a state court in passing upon the Federal constitutionality of a state statute. The analogy is not complete. The Philippines are within the exclusive jurisdiction of the United States government, with complete power of legislation in Congress over them, and when the interpretation of a Philippine statute comes before us for review, we may if there be need therefor re-examine it for ourselves as the court of last resort on such a question. It is very true that with respect to questions turning on questions of local customs, or those properly affected by custom inherited from the centuries of Spanish control, we defer much to the judgment of the Philippine or Porto Rican courts. *Cami v. Central Victoria*, 268 U. S. 469, 69 L. ed. 1046, 45 Sup. Ct. Rep. 570; *Diaz v. González y Lugo*, 261 U. S. 102, 67 L. ed. 550, 43 Sup. Ct. Rep. 286. But on questions of statutory construction, as of the Philippine Code of Procedure adopted by the United States Philippine Commission, this court may exercise an independent judgment." (pp. 522, 523)

In the instant case the construction of the Puerto Rican statute by its Supreme Court produces an unconstitutional result. It deprives creditors and stockholders of vested rights and property.

The statutes here involved are not derived from Spanish law. Local customs and knowledge of local conditions in nowise affect their construction. They are adopted from statutes of different States; statutes enacted for judicially recognized purposes and motives.

Where the jurisdiction of the Circuit Court of Appeals depends upon the construction of a local statute, it may construe it independently.

Petition of Zeno, 14 Fed. (2nd) 418 and cases cited. (Cert. denied. 285 U. S. 57.)

POINT II

The construction of paragraphs 4 and 5 of Section 182 of the Code of Civil Procedure by the Supreme Court of Puerto Rico was clearly wrong.

Whether the Supreme Court of Puerto Rico would have appointed a receiver if it had construed Section 28 of the Law of Private Corporations as applicable to dissolutions occasioned by the forfeiture of corporate charters can only be conjectured. Possibly the Court would have felt that some allegations and proof of the necessity of removing statutory trustees and substituting them by a receiver was necessary.

In any event, whether in connection with these sections of the Corporation Law, or separately considered, the Court does construe paragraph 4 of Section 182 of the Code of Civil Procedure as a sufficient ground for the appointment of a receiver and as conferring jurisdiction for that purpose without any principal suit to which such relief is ancillary. In other words, the Court apparently is of the opinion that a suit or action solely for the appointment of a receiver may be maintained under this section. Counsel for Petitioner, obviously somewhat dubious as to the soundness of this conclusion, prefers to rest the jurisdiction of the Court on paragraph 5 of the same Code Section (subdivision B of Point I, Petitioner's Brief, pp. 24 and 25) and to base the occasion and ground for the appointment of a receiver upon the equitable ground of abdication of trust by the statutory liquidators. (Petitioner's Brief, Points II and III, pp. 25-27.)

Both the Court and counsel for Petitioner assume that the appointment is made in a "pending" case, as they doubtless must, inasmuch as the two paragraphs mentioned only provide for the appointment of a receiver in a "pending case". This assumption, that the case was pending, is directly opposed to the definition and rule declared by Sec. 348 of the Code of Civil Procedure, that an action is deemed

to be pending from the time of its commencement until its final determination upon appeal or until the time for appeal has passed.

Statutes similar to or identical with Section 182 of the Puerto Rican Code are found in many of the Western States. With the only exception of Texas, the Courts of these states have held that the paragraphs of the section of their Codes of Civil Procedure identical with or equivalent to paragraphs 4 and 5 of Section 182 of the Code of Puerto Rico, do not do away with the established rule that courts of equity have no jurisdiction to appoint a receiver except as an ancillary remedy in aid of a primary suit.

These statutes are construed as not authorizing an appointment in a case enumerated in the statute as a ground, as original and independent relief, but only as an auxiliary remedy in an action otherwise properly brought. These statutes are carefully examined and the above conclusions and construction stated in *Cook v. Leona Mills Lumber Co.*, 106 Ore. 520, 212 Pac. 785. In this case, it is stated that the statute of Oregon relating to the appointment of a receiver for a corporation is almost identical with that of California (Kerr's Cyc. Codes of California, Sec. 564, par. 5), Montana (3 Revised Codes of Montana 1921, Sec. 9301, par. 5), North Dakota (2 N. Dak. Compiled Laws, Sec. 7588, par. 5) and Idaho (2 Idaho Compiled Statutes, Sec. 6817, par. 5).

In addition to the decisions and authorities cited in *Cook v. Leona Mills Lumber Co.*, the following are some of the cases in like manner construing this statute:

Stockholders of Jefferson County Agr. Association v. Jefferson County Agr. Association, 155 Iowa, 634, 136 N. W. 672;

Havemeyer v. Superior Court, 84 Cal. 327, 24 Pac. 121;

Weatherby v. Capital City Water Co., 115 Ala. 156, 171-2, 22 So. 140, 142.

It should perhaps be noted in passing that the Washington statute provides that when a judgment of involuntary

dissolution is rendered against a corporation the Court "shall restrain the corporation, appoint a receiver of its property and effects, taking account and making distribution thereof among the creditors" and that a similar provision exists in Louisiana.

We have noted under the preceding Point that the Texas Corporation Law, in which the term "dissolution" is unqualified, as construed by the Court of Civil Appeals does not make the directors of a corporation dissolved by a judgment of forfeiture trustees for the purpose of winding up the affairs of the dissolved corporation.

In *San Antonio Gas Co. v. State*, 54 S. W. 289, the Court said:

"When a charter is forfeited, the life of the corporation ceases, and no president and board of directors can survive it, and, unless specially authorized by statute, could not by virtue of their offices, take control of the property of the corporation. If article 682 could apply to cases in which there has been a forfeiture of a charter by the State, it can only apply when no receiver has been appointed by some court of competent authority. If it be necessary to justify the power given by statute, it may be well to remember that appellant in this case is a quasi public corporation, and for the protection of public interests it was necessary that a receiver should be appointed."

It should be noted in this and the Texas cases cited in the opinion, that the dissolved corporations were public service companies, that the appointment of a receiver was asked for in the complaint or information in each case as a part of the final judgment and was made by the final judgment, that the appointment was made in a "pending" case and the part of the judgment appointing the receiver provided that the receiver would take possession subject to just claims by anyone having an interest.

The construction of paragraph 4 of Section 182 of the Code of Civil Procedure by the Supreme Court of Puerto Rico is not supported by authority. It is contrary to the

clear implications of the decisions of that Court in *Schluter v. Teridor*, 26 P. R. R. 97 and *Balasquide v. Rossy*, 18 P. R. R. 33.

The rule that a receivership is merely an ancillary remedy that can not *per se* be the subject of a suit in equity and may only be granted when some proper and final relief is asked for in the bill of complaint has been so repeatedly declared by Federal Courts that citation of decisions is unnecessary.

It is submitted that a statute should be construed as changing this salutary doctrine only when this intention appears from clear and unequivocal language.

POINT III

The Supreme Court of Puerto Rico was

1. Without jurisdiction to make the order appointing a receiver.

2. In any event it was without jurisdiction to appoint a receiver to take possession of all property and assets of the respondent corporation and to continue the business at the expense of creditors and stockholders of the corporation.

1.

It is open to doubt whether the Supreme Court of Puerto Rico is authorized to appoint a receiver in any case. This question was raised but not decided in *Fernández y. The People, et al.*, 15 P. R. R. 605. The Supreme Court of Puerto Rico is an appellate court. It has no original jurisdiction of any of the primary suits or actions to which the remedy of a receivership provided in Section 182 of the Code of Civil Procedure is ancillary. Only Insular District Courts possess jurisdiction of such cases. The only existing suit or proceeding in which the Supreme Court of Puerto Rico is authorized to act as a trial court is in quo warranto actions or proceedings.

In the courts of those states to which the Supreme Court of Puerto Rico has looked in the past for guidance and rules of decision relating to common law or American remedies, suits and proceedings as distinguished from Civil Law suits, proceedings and remedies, it is held that unless the statute so provides, a court has no power to appoint a receiver in quo warranto proceedings upon the petition of the People or State.

* * * A receiver not being a common law officer and his functions having no relation to the title to the exercise of a franchise, which is the sole question raised on quo warranto to oust a corporation of its corporate franchise, no authority exists for the appointment of a receiver on a judgment of ouster in such a proceeding unless it can be found in express statutory provisions, and the state has no such interest as will sustain an application for such appointment either as a punishment of the illegal use of the corporate franchises or to see that the assets are properly distributed, although after such judgment of ouster and an abandonment of the corporate assets by the directors and officers, a receiver may properly be appointed on the application of a stockholder or creditor in the court having jurisdiction under the statute, to preserve and distribute the assets among creditors and stockholders of the corporation. Some statutes provide that when a corporation shall be dissolved in any manner whatever the court may appoint a receiver for it, and under such a statute, the mere fact of dissolution, or dissolution and property to be administered, is sufficient ground for the appointment. It is held, however, that even under such a statute, where there is also a statutory provision for a winding up by the directors as trustees, the court will not discontinue a liquidation by trustees and appoint a receiver except on equitable ground sufficiently alleged and proved."

19 Corpus Juris Secundum, p. 1528;

Yore v. San Francisco Superior Court, 108 Cal. 431;

Commonwealth v. Order of Test, 156 Pa. St. 531; 27 Atl. 14;

In re Fraternal Guardians Assigned Estate, 159 Pa. 603;

State v. West Wisconsin R. Co., 34 Wis. 197;

Jackson Loan & Trust Co. v. State, 101 Miss. 440, 56 So. 293;

Weatherby v. Capital City Water Co., 115 Ala. 156; 22 So. 140.

It would seem that the legislature of Puerto Rico recognized that the Supreme Court was without jurisdiction to appoint a receiver in a quo warranto proceeding by amending Section 6 of the Quo Warranto Law by Act No. 183, approved May 14, 1941, providing that "for the purpose of carrying out the provisions of this section, the Supreme Court is hereby empowered to appoint receivers who in behalf and with the approval of the Supreme Court shall have exclusive charge of the liquidation and sale of the property of the corporation or corporations affected."

Counsel for petitioner suggest, however, that there exists here a recognized equitable ground for the appointment of a receiver. The contention is that the directors of the corporation upon the decree of dissolution, either as directors and officers of the corporation or as statutory liquidating trustees, were charged with a trust "to hold the property subject first, to the jurisdiction of the Court in the pending proceeding, and particularly, during the pendency of the undecided motion for a receiver; and second, subject to the statutory option given by Act No. 47" (Petitioner's Brief, pp. 25, 26). This is a ground not set out in the motion or briefs of Petitioner filed in the Supreme Court of Puerto Rico, not assigned as a reason for making the appointment and not raised or suggested by Petitioner in the Circuit Court of Appeals.

We think that under the decisions of this Court, this theory and contention of Petitioner may not be raised now for the first time in this Court. *Helvering v. Minnesota Tea Co.*, 296 U. S. 378, 380. *Roure v. Government of the Philippine Islands*, 218 U. S. 386, 400. But assuming that

this theory may be considered, it is without foundation or merit.

It has been held by this Court that the property of a dissolved corporation belongs to its stockholders as tenants in common. *Pewabic Mining Co. v. Mason*, 145 U. S. 349, 356. The Circuit Court of Appeals for the Sixth Circuit said in *Stearns Coal and Lumber Co. v. Van Winkle*, 221 Fed. 590, 595, 596:

"The Pewabic Case recognized the right of stockholders to agree among themselves upon the disposition and transfer of the assets.

The relations of stockholders in an expired corporation are 'analogous to the relations of partners.' *Mason v. Pewabic Mining Co.*, 66 Fed. 391, 395, 13 C. C. A. 532 (C. C. A. 6); *Mason v. Pewabic Mining Co.*, 133 U. S. 59, 10 Sup. Ct. 224, 33 L. Ed. 524; Opinion of the Justices, *supra*, 66 N. H. 639, 33 Atl. 1076. The rule by which partnership real estate is regarded in equity as personalty is merely for the purpose of subjecting it to the payment of debts and the adjustment of balances between partners (*Riddle v. Whitehill*, 135 U. S. 635, 10 Sup. Ct. 924, 34 L. Ed. 282); but where there are no debts or the debts have all been paid, the partners have the right to personally dispose of or divide the lands (*Godfrey v. White*, 43 Mich. 171, 179, 5 N. W. 243; *Lovewell v. Schoolfield* (C. C. A. 6), 217 Fed. 689, 703, 133 C. C. A. 449).

Statutes for winding up the affairs of dissolved corporations are 'embodiments of equitable doctrines, and afford legal remedy where before there was none.' *Mason v. Pewabic Mining Co.*, 66 Fed. 395, 13 C. C. A. 532. Administration under such statutes takes the place of administration in equity. Had the officers of the Oil Well Company taken the statutory proceedings for liquidation of the affairs of the corporation, it would, we think, have been entirely competent, after the payment of debts or after ascertainment that there were none, for the stockholders to divide or dispose of the real estate on the basis of legal ownership as tenants in common."

In *Rossi v. Caire*, 174 Cal. 74, 81, 82, the Court said:

"* * * The corporation having ceased to exist, it is no longer capable of holding the title or the possession; the property belongs to the persons who were its stockholders at the time it ceased to be a corporation (*Havemeyer v. Superior Court*, 84 Cal. 362 (18 Am. St. Rep. 192, 10 L. R. A. 627, 24 Pac. 121)), and the right of possession passes to the directors by force of the statute making them trustees to settle the corporate affairs, since such right must be necessary for that purpose.

The duties of the trustees are measured by their powers and by the principles of law and equity applicable to the conditions. They have in their possession property belonging to others, they are bound to settle the affairs of the former owner, and they have all the power to deal with and dispose of the property that is necessary to accomplish that object. The interests they are to serve are the interests of the stockholders to whom the property belongs, and of the creditors of the defunct corporation whose debts constitute a paramount charge upon that property. The forfeiture declared by the statute takes place instantly upon the failure to pay the license-tax within the time allowed. It may strike the corporation dead while it is a going concern with large operations or contracts in process of completion which, if not prosecuted to the end, may entail great loss to the stockholders. It may occur while debts are owing but not yet due or payable. The property may be in a condition reasonably requiring further and continued work for its preservation or to make it valuable. The obvious purpose of this statute, in view of these circumstances is, as was said in the *Havemeyer* case above cited, 'to leave the whole matter of liquidation and distribution to the exclusive control of the directors of the corporation in office at the time of dissolution' (p. 365), and to render it unnecessary and improper for a court to intervene in their proceedings, or to supervise the same in any particular, unless they are guilty of 'neglect of duty or abuse of power' (p. 367). In order

to justify the interference of a court, says the supreme court of Alabama, the mere fact of dissolution, or forfeiture of the charter, is not enough; the facts appearing must be of a character to show that the trustees are incompetent, or unfaithful, or are mismanaging the property to the injury of the complainant, or are without power and authority to subserve some peculiar interest or right of the party complaining and that he is being injured thereby. (*Weatherby v. Capital etc. Co.*, 115 Ala. 172 (22 South. 142).) This language was used with reference to an application for the appointment of a receiver to take charge of and administer the corporate assets, as also was the language in the *Havemeyer* case, but the same principles apply to any application for the intervention of the judicial power to supersede, supervise, or control the powers conferred by the statute upon the trustees.

It was not a necessary part of the statutory duty of the trustees to find a buyer for the land, or to sell the same, otherwise than in order to settle the corporate affairs. If they had money to pay all debts and expenses and all other corporate affairs were disposed of, it would be no abuse of their discretion if they merely delivered the possession of the land to the stockholders as tenants in common according to their interests, leaving them to do with it what they pleased. The fact that they did not look for a buyer is not, of itself, a breach of duty. It must also appear, in order to justify judicial interference to order a sale, that the interests of the parties and the settlement of the corporate affairs required a sale. This does not appear."

The directors of the dissolved respondent corporation would have been guilty of gross negligence and inexcusable failure to comply with the plain duty imposed upon them by law as statutory trustees, if they had not taken immediate steps to protect the interest of creditors and stockholders and to prevent the loss or diminution of the properties and assets of the corporation.

On the date that this Court reversed the Circuit Court of Appeals and affirmed the judgment of the Supreme Court of Puerto Rico the grinding season was at its peak; the sugar factory was in full operation. To stop the operation of the factory for a single day would have meant a loss of thousands of dollars. If the factory ceased to grind the ripe cane of the many independent colono growers and the cane of the corporation the enormous investment in such sugar cane plantations would have been lost. The Directors of the corporation could not know that Petitioner would ask that the "immediate" winding up of its affairs should be indefinitely delayed or that it would contend that Section 2 of the Quo Warranto Law should be construed to extend the option period for six months, *after* the final judgment. Counsel for Petitioner had stated in this Court that what had been asked in the prayer of the information and decreed by the Court was the normal liquidation of the corporation. He said:

"So what would normally follow that in effect would be a requirement of dissolution by the stockholders in the manner pointed out by the corporation law, and, if necessary, the appointment of a receiver and the winding up of the business of the corporation, as any business is wound up upon the death of the corporation, for any purpose at all or for any reason."

There was no attempt to evade any consequences that the law might validly impose. The notice of *lis pendens* adequately protected the option if it should be exercised and even without a *lis pendens*, the lands of the dissolved corporation illegally acquired and controlled would as readily be subjected to the consequences of the exercise of the option as it would in the possession of the corporation itself.

The real theory of Petitioner is that it was or is in some way illegal for these lands to pass to a partnership; that the stockholders of the corporation are for some unknown reason prevented from doing what it was open to any other persons, citizens or aliens to do, namely, to own and pos-

ness as partners more than five hundred acres of land. This pretended privation of the stockholders of their constitutional rights; this partial disenfranchisement finds no legal basis or support. The only law in force in Puerto Rico limiting ownership of land applied to corporations and corporations only. It had never been contended by anyone that a partnership could not own and control over five hundred acres of land. It was not until the passage of the Land Authority Act, approved April 12, 1941 (Act No. 26) that any limitation on partnership or community ownership of land was established by law in Puerto Rico.

The statutory directors here adopted a method of liquidation followed and approved in the cases above cited and in other cases. *Crocker v. Commissioner of Internal Revenue*, 84 Fed. (2nd) 64.

2.

What Petitioner asked for in the motion for appointment of a receiver was a receiver to liquidate and wind up the affairs of the dissolved corporation. What Petitioner got was an order postponing liquidation indefinitely and creating an operating receivership—a receivership to carry on the business in which the corporation had been engaged. For this end the receiver was authorized and directed to take not only the land unlawfully owned and controlled by the corporation, but all other land, all real property, all personal property and assets of every nature. The receiver was empowered to use the funds of the corporation as he saw fit to carry on this business and to create preferential liens upon such properties to secure moneys that he might borrow.

After dissolution of a corporation a receiver can only be appointed for the purpose of liquidating and winding up the affairs of the corporation. Such a receiver has no power to continue the business. *14a C. J.* 1185, and cases cited.

In the instant case the Supreme Court of Puerto Rico bases the appointment of a receiver upon the supposed

necessity of preserving the *status quo* until the option to confiscate unlawfully held land or have it sold at public auction has expired and if it is exercised until the fair value of the land has been judicially determined and it has been transferred either to the People of Puerto Rico or to the successful bidders at auction sales. The interest of the Petitioner that entitles it to request the appointment of a receiver is declared to be the option that it may or may not exercise. It is doubtless the rule that prior to dissolution a receiver to conduct the business as a going concern will not generally be appointed in the case of a strictly private corporation. And there is respectable authority holding that after dissolution a receiver can not be appointed to carry on the business of the corporation. *Standlie v. Hendrie & Bolthoff Mfg. Co.*, 27 Colo. 331, 61 Pac. 600; *In re Brown & Jenkins Co.*, 106 La. 486, 31 So. 67; *Gady v. Centerville Knit Goods Mfg. Co.*, 48 Mich., 190, 11 N. W. 839.

In any case it is not the province of a court of equity to take possession of the property and conduct the business of corporations or individuals, except where the exercise of such extraordinary jurisdiction is necessary to save or protect some clear right and which can not otherwise be protected.

Overton v. Memphis & L. R. Co., 10 Fed. 866.

The appointment of a receiver to conduct the business of the dissolved corporation in the instant case was made without jurisdiction:

First, because property not involved in the litigation, property in which the Petitioner has no interest is turned over to the receiver.

"To authorize the appointment of a receiver, the petitioner must show that he has some lien upon or property right in the property or that it constitutes a special fund out of which he is entitled to the satisfaction of his demand, and an application for such appointment can only be made by those who have an acknowledged

interest or at least a probable right or interest in or to the property, fund or assets over which a receiver is sought."

"A court can not appoint a receiver to take charge of property which is not involved in the litigation or to take charge of a debtor's property, including that which is not as well as that which is specially bound for the payment of the claim in suit."

In re Richardson's Estate, 294 Fed. 349, 357;

Smith v. McCullough, 104 U. S. 25.

There was no showing or suggestion that possession of the factory, railroad, cars and other personal property was necessary for the preservation of the lands unlawfully possessed by the corporation.

If the appointment of a receiver was otherwise authorized it should have been limited to the land to which the option attached.

Second, the Supreme Court of Puerto Rico has no jurisdiction to authorize a receiver to create a preferential lien upon the property of a private corporation for the purpose of carrying on the business without the consent of creditors and stockholders.

Sobrinos de Ezquiaga v. Rossy, 21 P. R. R. 369.

Third, the order authorizing the receiver to take, use, consume and exhaust moneys, other personal property and all other property and assets of the respondent corporation in addition to the land on which the Petitioner has an option and which constitutes a trust fund for creditors and stockholders, deprives such stockholders of property without due process of law and of just compensation, in violation of the Organic Act of Puerto Rico and the Constitution of the United States.

Fourth, the order is without or in excess of jurisdiction because it authorizes the receiver to carry on business activities not authorized by the corporate charter of the respond-

ent corporation and declared unlawful by the judgment of forfeiture and dissolution. It confers a franchise power that the legislature is prohibited from conferring.

Safford v. People, 85 Ill. 558;

In re Detroit Properties Corporation, 254 Mich. 523, 236 N. W. 850, 852;

Lewis v. Germantown etc. R. Co., 16 Phila. 608;

Gordon v. Business Men's Racing Association, 33 So. 768;

American Biscuit and Mfg. Co. v. Klotz, 44 Fed. 721.

Fifth, the order appointing a receiver upon the only ground that it was necessary to protect Petitioner's option, affecting lands unlawfully possessed by defendant corporation, was unauthorized because Petitioner's option was already adequately protected by *lis pendens* and Petitioner could also have obtained an injunction as it had in other cases.

"An adequate remedy by *lis pendens* precludes the appointment of a receiver, as does such a remedy by contempt proceedings, by accounting, by stay of proceedings, or by attachment or execution or by injunction."

16 *Fletcher Cyclopedia of Corporations* (Permanent Ed.), p. 202.

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

HENRI BROWN,
Attorney for Respondent.

JAIME SIFRE, JR.,
Of Counsel.

January 1942.

SUPREME COURT OF THE UNITED STATES.

No. 96.—OCTOBER TERM, 1941.

The People of Puerto Rico, Petitioner,	}	On Writ of Certiorari to
vs.		the United States Cir-
Rubert Hermanos, Inc., et al.		cuit Court of Appeals for the First Circuit.

[March 16, 1942.]

Mr. Justice BYRNES delivered the opinion of the Court.

By Joint Resolution of May 1, 1900, the Congress provided that "every corporation hereafter authorized to engage in agriculture [in Puerto Rico] shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land."¹ This limitation was carried over into the present Organic Act of Puerto Rico enacted on March 2, 1917.² In 1935 the Legislative Assembly of Puerto Rico enacted two laws to provide the means of enforcing the Congressional prohibition. Act No. 33 conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction over quo warranto proceedings instituted for violations of the 500 acre law.³ Act No. 47 authorized the Attorney General of Puerto Rico or any district attorney to bring such quo warranto proceedings in the Supreme Court of Puerto Rico against any corporation violating the Organic Act, and provided further that when any corporation is "unlawfully holding . . . a real estate in Puerto Rico, the People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered."⁴

This is a quo warranto proceeding brought in 1937 against respondent corporation by the Attorney General of Puerto Rico under these statutes. The complaint alleged that respondent corporation

¹ § 3, 31 Stat. 715.

² § 39, 39 Stat. 951, 964, U. S. C. Title 48, § 752.

³ Act of July 22, 1935, Laws of Puerto Rico, Special Session, 1935, p. 418.

⁴ Act of August 7, 1935, Laws of Puerto Rico, Special Session, 1935, pp. 530-532.

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was organized in 1927 under the laws of Puerto Rico for the purpose of acquiring and working sugar cane farms and plantations, that its articles of incorporation restricted it to the acquisition of 500 acres; that it nevertheless had acquired, and that it owned and was working at the time of the filing of the complaint, some 12,188 acres of land. The answer conceded that the 500 acre restriction was contained in the articles and that the respondent had nevertheless acquired the 12,188 acres, but interposed several defenses. On July 30, 1938 the Supreme Court of Puerto Rico entered judgment for the petitioner. It ordered "the forfeiture and cancellation" of the license and articles of incorporation of respondent, "the immediate dissolution and winding up of the affairs" of the corporation, and the payment of a \$3000 fine and costs. On the same day, petitioner moved that a receiver be appointed to handle the dissolution and disposition of the respondent's property, pursuant to subsections 4 and 5 of § 182 of the Puerto Rico Code of Civil Procedure.⁵

The motion for the appointment of a receiver was held in abeyance pending an appeal to the Circuit Court of Appeals for the First Circuit. That Court reversed the judgment of the Supreme Court of Puerto Rico on the ground that Acts Nos. 33 and 947 exceeded the authority of the Legislative Assembly under the Organic Act. 106 F. 2d 754. We granted certiorari, and on March 25, 1940 reversed the judgment of the Circuit Court of Appeals and reinstated that of the Supreme Court of the Island. 309 U. S. 543.

The mandate of this Court reached the clerk of the Supreme Court of Puerto Rico on May 13. On the same day the Attorney

§ "Section 182.—(564 Cal.) A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

"1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or jointly interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

"2. After judgment, to carry the judgment into effect.

"3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

"4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

"5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity." (1933 ed., italics added.)

General entered a request for a hearing on petitioner's pending motion for the appointment of a receiver. The respondent then filed its answer and briefs were submitted by both parties. In its answer and brief respondent raised numerous objections to the appointment of a receiver. Chief among these objections were: (a) that on March 28, 1940, respondent corporation had been dissolved by vote of its stockholders and its property conveyed to a partnership consisting of all the stockholders, so that nothing remained to be done; and (b) that the statutes applicable to this case are certain sections of the Private Corporations Law⁶ rather

⁶ "Section 27.—*Corporate existence pending dissolution.* All corporations, whether they expire through the limitation contained in articles of incorporation or are annulled by the Legislature, or otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital; but not for the purpose of continuing the business for which they were established.

"Sec. 28 (as amended by Act No. 24 of 1916, p. 68).—*Directors as trustees pending dissolution.* Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof, pending the liquidation; with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, so far as such moneys and property shall suffice. They shall have power to meet and to act under the bylaws of the corporation, and, under regulations to be made by a majority of the said trustees; to prescribe the terms and conditions of the sale of such property, or may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of the said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequently thereto, the surviving directors or director shall be the trustees or trustee thereof, as the case may be, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying debts, as far as such moneys and property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this Act relative to the winding up of the affairs of such corporation and to the distribution of its assets.

"Sec. 29.—*Powers and liabilities of Trustees in Liquidation.* The directors constituted trustees as aforesaid shall have power to sue for and recover the aforesaid debts and property by the name of the corporation and shall be suable by the same name, or in their own names or individual capacities for the debts owing by such corporation, and shall be jointly and severally responsible for such debts to the amount of the money and property of the corporation which shall come to their hands or possession as such trustees.

"Sec. 30.—*Judicial appointment of liquidators.* When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Porto Rico is situated, on application of any creditor or stockholder, may at any time either continue the directors as trustees as aforesaid, or appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof, to collect the debts and property due and belonging to the corporation, with power to prosecute and defend in the name of the corporation, or otherwise, all suits necessary or appropriate for the purposes aforesaid, or to appoint an agent or agents under them, or to do other acts that might be done

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than § 182 of the Code of Civil Procedure,⁷ that under the terms of the former "the directors shall be the trustees . . . pending the liquidation" of any dissolved corporation, and that the court was consequently without jurisdiction to appoint a receiver under § 182. The insular court resolved all the issues in petitioner's favor, appointed a receiver of all the property of the respondent, and directed the receiver to handle the property as a going concern until the People of Puerto Rico should exercise the option granted to them by § 2 of Act No. 47 of August 7, 1935 either to confiscate the real estate unlawfully held by respondent or to have it sold at public auction.⁸

From this order respondent took a second appeal to the Circuit Court of Appeals, making the two contentions which have been noted as well as many others which require no discussion here. The Circuit Court of Appeals disposed of several of these contentions unfavorably to the respondent. However, it reversed the judgment of the Supreme Court of Puerto Rico on the ground that the order appointing the receiver was "improvidently issued". In the opinion of the Circuit Court, §§ 27, 28 and 30 of the Private Corporation Law are unquestionably applicable to the dissolution of a corporation by court order as a result of a violation of its charter and the laws, although the insular court had declared them "applicable only to a voluntary dissolution agreed upon by the shareholders of a corporation or by expiration of the term fixed for its duration." With respect to § 182 of the Code of Civil Procedure, upon which the lower court relied, the Circuit Court of Appeals determined that it permitted the appointment of a receiver only "upon proper showing by an interested party, agreeably to the usages of courts of equity." It concluded that the option granted by Act No. 47 of 1935 did not afford the People of Puerto Rico an interest sufficient for this purpose. It observed

by such corporation if in being that may be necessary for the final settlement of its unfinished business, and the powers of such trustee or receivers may be continued so long as the courts shall think necessary for such purpose." (Appendix to Code of Commerce of Puerto Rico (1932 ed.) 327, at 355.)

⁷ See note 5, *supra*.

⁸ Section 2 provides, in part:

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

"In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

that the option relates only to the excess acreage, whereas the order had sought to place the receiver in charge of all the property of the respondent, both real and personal. If the People of Puerto Rico should elect to have the land sold at public auction,⁹ the Circuit Court asserted, a master can be appointed for that purpose, and in the meantime a notice of lis pendens which was filed with the Registry of Property will prove adequate to protect the People's interest.

The Circuit Court's opinion leaves it uncertain whether it meant to hold that the insular court wholly lacked power to appoint a receiver for a judicially dissolved corporation or merely that it abused its discretion in this case. In any event, the questions for our determination seem to be these: (1) does it lie within the power of the Supreme Court of Puerto Rico to appoint a receiver for the assets of a corporation whose dissolution has been judicially ordered because it has violated its articles of incorporation and the laws of Puerto Rico and the United States; (2) did that court abuse its discretion in appointing a receiver under the circumstances of this case; and (3) did the scope of the order exceed the court's authority?

First: Whether or not it is within the power of the Supreme Court of Puerto Rico to place a receiver in control of the property of a corporation which has been dissolved for violation of law is a question whose answer must be found in the statutes of the Island. As we have said, § 182 of the Code of Civil Procedure provides: "A receiver may be appointed by the court in which an action is pending or has passed to judgment; or by the judge thereof: . . . (4) In the case when a corporation has been dissolved, or is insolvent, or in immediate danger of insolvency, or has forfeited its corporate rights. (5) In all other cases where receivers have heretofore been appointed by the usages of courts of

⁹ According to the Circuit Court's opinion, on August 28, 1940, after the order appointing the receiver had been entered, the Attorney General filed with the insular court the following statement: "Therefore, The People of Puerto Rico elects to have all the lands in the possession of the respondent sold at public auction, and prays this Court to order the sale at public auction of the said real property by the receiver already appointed by this Court, after the same is assessed in conformity with the provisions of the Condemnation Proceedings Act now in force." In the Circuit Court, the respondent argued that the option provided by Act No. 47 could not be exercised in this manner but only by an Act of the Legislative Assembly. We share the Circuit Court's view that this and other problems relating to the actual exercise of the option must first be passed upon by the Puerto Rican Supreme Court.

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equity." It seems hardly debatable that if nothing more were shown, these provisions would strongly support the assertion of power by the insular court to appoint a receiver for respondent's property. But respondent urges that the provisions of §§ 27, 28, 29 and 30 of the Private Corporations Law compel the opposite conclusion. Section 27 provides that "all corporations, whether they expire through the limitation contained in articles of incorporation or are annulled by the Legislature, or otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital; but not for the purpose of continuing the business for which they were established." Section 28 declares that "upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation." And Section 30 authorizes the appropriate district court of Puerto Rico, "on application of any creditor or stockholder, . . . at any time either [to] continue the directors as trustees as aforesaid, or [to] appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof . . ." Again, if nothing more than these sections were before us, we think it clear enough that upon the dissolution of a corporation "in any manner," the directors would remain in charge of the assets as trustees until some "creditor or stockholder" moved a district court—not the Supreme Court of the Island—to remove them.

A frank recognition that the statutes appear on their face to conflict and to overlap permits us to avoid the lengthy and technical arguments which have been advanced by both parties in this Court and in the courts below. The Supreme Court of Puerto Rico resolved this conflict in favor of its power to appoint a receiver by holding that the pertinent sections of the Private Corporations Law do not apply to judicially ordered dissolutions but that § 182 of the Code of Civil Procedure does apply. In recent years we have had occasion to announce that the decisions of the courts of Puerto Rico with respect to the interpretation of the Island's statutes and to matters of local law are to be accorded the greatest weight. *Sancho Bonet v. Yabucoa Sugar Co.*, 306 U. S. 505; *Sancho Bonet v. Texas Company*, 306 U. S. 463. We cannot say that an interpretation placed by the Supreme Court of Puerto Rico upon statutes whose meaning is so open to doubt

is plainly incorrect. Accordingly, though the interpretation suggested by the Circuit Court of Appeals may be equally plausible, it erred in reversing the judgment of the insular court.

Second: Assuming that under § 182 the insular Supreme Court has the power to appoint a receiver for a judicially dissolved corporation, the question remains whether it has abused its discretion in appointing a receiver in this case. The Circuit Court of Appeals, after indicating its belief that the power to appoint a receiver is a drastic one and that it should be sparingly employed, concluded that its use was not warranted by the circumstances of this case. Its reasoning was that the sole interest of the petitioner was its option either to confiscate the excess acreage or to have it sold at public auction. "The People do not need a receiver to protect the option. If and when the time comes for the court to decree a sale of the land at public auction a master can be appointed to carry through the sale. The land will still be there. Meanwhile, the interest of the People is protected by a *lis pendens* notice which was entered in the Registry of Property shortly after the institution of the quo warranto proceedings, which notice the corporation unsuccessfully sought to have cancelled." 118 F. 2d 752, at 759-760.

It may be true that the procedure suggested by the Circuit Court would have been adequate to the needs of the case. It may even be true that an injunction restraining the directors of respondent from disposing of the property pending the People's choice would have been sufficient. But the same considerations that compel restraint on the part of appellate courts where the question is one of power, apply with double force where the question merely concerns the propriety of its exercise. The Supreme Court of Puerto Rico was in the best position to determine what the situation demanded. The attempted transfer of the corporate assets on March 28, 1940 may have been a bona fide effort to comply with the earlier decree of dissolution, as respondent insists. But the fact that the transfer was made to a partnership whose members had been the stockholders of the dissolved corporation might suggest a disposition on the part of the directors to obstruct the effective exercise of the option afforded the People by Act No. 47. Certainly it would not have been unreasonable for the insular court to suspect that this was so. No doubt the *lis pendens* notice would prevent the directors from conveying an interest in any of the property which would be superior to that

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of a purchaser at a subsequent public auction conducted pursuant to Act No. 47. But the sale and resale of the property, or its encumbrance, could only result in confusion, misunderstanding and needless litigation. It was clearly within the discretion of the Supreme Court of the Island to avert these difficulties.

Third: Respondent insists and the Circuit Court held, finally, that the order was too broad to be sustained. It is argued that it was not confined to the land which was actually in excess of the 500 acre maximum but included all the properties of the respondent, and that it authorized the continued operation of the business by the receiver for an indefinite period. To treat the latter objection first, an examination of the order appointing the receiver reveals that paragraph 7 specifically contemplates the exercise of its option by the People of Puerto Rico. A fair reading of the order requires us to conclude that the period of the receivership was definite enough, since it was clearly regarded as a preliminary to the exercise of the option. The receiver was expressly directed to surrender the properties whenever the People had indicated its choice. As to the provision of the order consigning the whole of respondent's properties to the receiver, it is enough to say that everyone concedes that the properties constitute a working unit in growing, cutting and grinding sugar. To separate the land from the machinery and other personalty pending the People's election between alternative procedures would have been inexcusable economic waste. It was altogether proper for the Supreme Court to recognize these realities and to permit the receiver to preserve the enterprise as a going concern pending a final settlement. Nothing in § 182, upon which it relied for authority to appoint the receiver, requires that it limit the receivership in the manner suggested by respondent.

The order of the Supreme Court of Puerto Rico should be sustained in full.

Reversed.

The CHIEF JUSTICE and Mr. Justice ROBERTS are of the opinion that the court below correctly held, for reasons stated in detail in Judge Magruder's opinion, 118 F. 2d 752, that the appointment of a receiver by the Insular court in the circumstances of this case was an abuse of discretion and that it was the duty of the Circuit Court of Appeals in the exercise of its appellate authority to set the appointment aside.